

DEVELOPMENTAL DISABILITIES ASSISTANCE AND BILL  
OF RIGHTS ACT AMENDMENTS OF 1993

AUGUST 3 (legislative day, June 30), 1993.—Ordered to be printed

Mr. KENNEDY, from the Committee on Labor and Human  
Resources, submitted the following

REPORT

[To accompany S. 1284]

The Committee on Labor and Human Resources, to which was referred the bill (S. 1284) to revise and extend the Developmental Disabilities Assistance and Bill of Rights Act, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. SUMMARY OF THE BILL

On July 30, 1993, the Committee on Labor and Human Resources, by a unanimous voice vote, ordered favorably reported S. 1284, the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1993.

The bill is sponsored by Senator Tom Harkin, chairman of the Subcommittee on Disability Policy, and cosponsored by Senators Durenberger, Kennedy, Jeffords, Metzenbaum, Simon, Wellstone, Wofford, Dole, Pell, and Hatch.

As approved by the Committee on Labor and Human Resources, S. 1284 reauthorizes the Developmental Disabilities and Bill of Rights Act. This Act is a "systemics change, capacity building, and advocacy" Act. This legislation was first passed in 1970, and was most recently reauthorized in 1990. The Act has four components: the basic State grant program, carried out through the State Developmental Disabilities Councils; protection and advocacy systems; university affiliated programs; and projects of national significance.

The Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1993 (S. 1284) reaffirms the thrust of the four components of the Act and includes several amendments to update, clarify and strengthen the Act.

The findings, purpose and policy section of the legislation is updated to reflect the recent developments in the field and is consistent with other Federal disability policy. The overall purpose of the Act is to assure that individuals with developmental disabilities and their families have access to services, supports and other assistance and opportunities which promote independence, productivity, integration and inclusion into the community. The findings include a provision that "disability is a natural part of the human experience and in no way diminishes the right of individuals with developmental disabilities to live independently, enjoy self-determination, make choices, contribute to society, and experience full integration and inclusion in the economic, political, social, cultural, and educational mainstream of American Society," and that the Nation's goals include "providing individuals with developmental disabilities with the opportunities and support to make informed choices and decisions; live in homes and communities in which such individuals can exercise their full rights and responsibilities as citizens; pursue meaningful and productive lives; contribute to their family, community, State and Nation; have interdependent friendships and relationships with others; and achieve full integration and inclusion in society." The policy includes recognition of the decision-making roles played by individuals and their families; recognition that individuals with developmental disabilities and their families have competencies, capabilities, and personal goals that should be recognized, supported, and encouraged; respect for individual dignity, personal preferences, and cultural differences; and community acceptance and support.

The bill maintains and strengthens the independence of the State Developmental Disabilities Councils (under the basic State grant program) to carry out systemic change, capacity building and advocacy activities which assist in developing a comprehensive system of services, supports and other assistance for individuals with developmental disabilities and their families. Provisions are included to clarify issues regarding Council membership, rotation of members, and Council vacancies and appointments. The bill requires State Developmental Disabilities Councils to coordinate activities with other State councils, committees and programs concerned with individuals with disabilities and to report systems change activities which affect individuals with disabilities other than developmental disabilities.



The bill authorizes to be appropriated for the basic State grant program \$77,400,000 for fiscal year 1994, and such sums for fiscal years 1995 and 1996.

The bill adds clarifying provisions regarding the role of protection and advocacy systems in each State to protect the legal and human rights of individuals with developmental disabilities, regarding access to residents of a facility, and regarding the process for designation of the State agency which implements the system. The bill provides for the opportunity for consumer groups to provide comments on the system as part of a Federal review and the addition of an Advisory Council for protection and advocacy systems that are in State agencies. The bill creates a process for establishing an American Indian Consortium to provide a system of protection and advocacy to American Indians who live on Indian lands. Finally, the bill includes a provision that authorizes a 2 percent set-aside for technical assistance to protection and advocacy systems, when appropriations increase to \$24,500,000.

The bill authorizes to be appropriated for protection and advocacy systems \$29,000,000 for fiscal year 1994 and such sums for fiscal years 1995 and 1996.

The bill strengthens and maintains the part of the legislation concerning university affiliated programs (UAPs) by providing for an updated description of the core activities of UAPs: preparation of personnel, community services which includes community training and technical assistance and which may include direct services, and dissemination of information. The bill provides an additional topic area—the Americans with Disabilities Act—for UAP training projects. The bill provides for grant periods of up to 5 years for core awards and for training projects. Finally, the priorities for expansion of the network of university affiliated programs are provided as follows: the addition of two new UAPs in States which are unserved by a UAP, funding training projects in every eligible UAP, increasing the training project awards to UAPs from \$90,000 to \$100,000, increasing the core award from \$200,000 to \$250,000, and expanding UAP training into underserved States and regions.

The bill authorizes to be appropriated for UAPs \$21,000,000 for fiscal year 1994 and such sums for fiscal years 1995 and 1996.

Finally, the bill authorizes the Secretary to make grants to, or enter into contracts with, public or nonprofit private entities for projects of national significance relating to individuals with developmental disabilities and their families to support ongoing data collection efforts, provide technical assistance, assist States in developing information and referral and service coordination systems, educate policymakers, pursue Federal interagency initiatives, and increase the participation of individuals from minority groups in the programs authorized under this Act. In addition, the bill provides for a study of the expansion of part B to individuals with disabilities other than developmental disabilities. Authorized projects include a study of State Developmental Disabilities Councils that are currently using an expanded definition, a study by up to five Councils that are considering an expansion of the definition, and a national project to analyze the experiences of the Councils and provide recommendations regarding expansion of the definition.

The bill authorizes to be appropriated for projects of national significance \$4,000,000 for fiscal year 1994 and such sums for 1995 and 1996.

## II. BACKGROUND AND NEED FOR THE LEGISLATION

### THE 1970 AMENDMENTS

The Developmental Disabilities Services and Facilities Construction Amendments of 1970, P.L. 91-517, was the first Congressional effort to address the needs of a group of people with disabilities designated as developmental disabilities. P.L. 91-517 amended the Mental Retardation Facilities and Community Health Centers Construction Act of 1963. The 1970 Amendments defined developmental disability to include people with mental retardation, cerebral palsy, epilepsy, and other neurological conditions closely related to mental retardation which originate prior to age 18 and constitute a substantial handicap.

The 1970 Amendments authorized State allotments for planning, services, and construction of facilities for people with developmental disabilities. A State plan was required which was to designate a State planning and advisory council. One-third of the council was to be comprised of consumers of service. The State plan was to describe the quality and extent of services and to show how funds were to be used to augment, rather than duplicate, services already available.

Grants to help support interdisciplinary training in institutions of higher education were authorized to help meet shortages of personnel to provide services to persons with developmental disabilities. This has become known as the university affiliated program.

A National Advisory Council on Services and Facilities for the Developmentally Disabled was also authorized.

### THE 1975 AMENDMENTS

The Developmental Disabilities Assistance and Bill of Rights Act, P.L. 94-103, required that Protection and Advocacy programs be established in each State as a condition to receive the State grant. The protection and advocacy systems were designed to protect and advocate for the rights of persons with developmental disabilities and to pursue legal, administrative, and other remedies to ensure the protection of rights of such persons.

The 1975 Amendments added the "Rights of the Developmentally Disabled," which included Congressional findings such as the right to appropriate treatment and services designed to maximize individual potential.

The Federal discretionary grant authority was added by the 1975 Amendments. Grants were authorized for demonstration service projects, public information projects and for other activities designed to improve services for persons with developmental disabilities.

The definition of "developmental disability" was expanded to include autism and dyslexia, if such dyslexia resulted from one of the other disabilities included in the definition.

The 1975 Amendments defined "university affiliated facility" to mean a part of a college or university that has a demonstration

service program and provides education and training, including interdisciplinary training to persons needed to render service to persons with developmental disabilities. Satellite centers were authorized to extend training and service to unserved areas.

The Amendments added a requirement that all persons served under authorized programs have in effect a written habilitation plan which states long-term habilitation goals, intermediate objectives, and a plan for service delivery.

#### THE 1978 AMENDMENTS

Title V of P.L. 95-602 amended the act by authorizing a revised definition for the term "developmental disability." Prior to the 1978 Amendments, the term was defined to include mental retardation, cerebral palsy, epilepsy, autism, and certain other neurological conditions. A major provision of the 1978 Amendments modified this definition by deleting all references to specific handicapping conditions and establishing a definition based on functional limitations.

The 1978 Amendments established four priority service areas and required that States choose not more than two priority service areas for expenditure of not less than \$100,000 or 65 percent of the State grant funds, whichever was greater. The four priority service areas were: case management services, child development services, alternative community living arrangement services, and nonvocational social-developmental services.

The Amendments repealed authorization for the National Advisory Council on Services and Facilities for the developmentally disabled.

#### OMNIBUS BUDGET RECONCILIATION ACT OF 1981

P.L. 97-35, the Omnibus Reconciliation Act of 1981, provided authorization for the developmental disabilities programs for fiscal year 1983 and fiscal year 1984 and repealed a requirement for a comprehensive evaluation system for people with developmental disabilities served under this Act.

#### THE 1984 AMENDMENTS

The Developmental Disabilities Act of 1984, P.L. 98-527, added a statement of purpose to the Act which specified that programs authorized are to help assure that persons with developmental disabilities achieve their maximum potential through increased independence, productivity, and integration into the community.

The 1984 Amendments added employment-related activities as one of the priority service areas. Employment-related activities were specified as one of a State's priority service activities after fiscal year 1986 if the appropriation for the State grant program equals or exceeds \$50.25 million in that year. The Amendments provided that States may choose up to three priority service areas beginning in fiscal year 1987. The Amendments deleted nonvocational social-developmental services as a priority service area, but retained authorization for these services on a nonpriority basis. Also, services to promote and coordinate activities to prevent developmental disabilities were authorized by the Amendments.

The State Planning Council membership was required by the Amendments to include representatives of the State agencies that administer the Rehabilitation Act, the Education of the Handicapped Act, and Title XIX of the Social Security Act (Medicaid), as such title affects persons with developmental disabilities. Protection and advocacy systems, higher education training facilities, and each university affiliated facility (program) or satellite center in the State were required to be represented on the Council.

The Amendments required that not more than 25 percent of the State grant funds be allocated to the administering agency for the provision of services by such agency.

Minimum allotments established by the Amendments for the basic State grant program provided that when appropriations reached \$47 million, States were to receive a minimum allotment of \$300,000 (compared to \$250,000 prior to the Amendments) and territories were to receive a minimum of \$160,000 (compared to \$100,000 prior to the Amendments).

The Amendments prohibited States from redesignating the agency that administers the protection and advocacy system unless the State determines that good cause existed for the redesignation. States must give notice to persons with developmental disabilities or their representatives regarding any intention to redesignate. Information and referral services were authorized for protection and advocacy systems.

Protection and advocacy systems were given access to the records of persons with developmental disabilities living in residential facilities if there are complaints regarding the facility and if the individual does not have a legal guardian or the State is the legal guardian.

Minimum allotments established by the 1984 Amendments for protection and advocacy systems provided that when appropriations equalled or exceeded \$11 million, States were to receive \$150,000 (compared to \$50,000 prior to the Amendments), and territories were to receive a minimum of \$80,000. (There was no statutory minimum for territories prior to the 1984 Amendments.)

The 1984 Amendments provided that no university affiliated facilities (programs) were to be funded after fiscal year 1985 unless a feasibility study had been conducted and the need for the facility documented. Applications for university affiliated facilities and satellite centers were required to provide assurances that the human rights of persons receiving services were protected according to section 110 of the Act, Rights of the Developmentally Disabled.

When appropriations reached \$8.5 million, the minimum amount of a grant to a university affiliated facility was to be \$175,000 (the previous grant minimum was \$150,000). The minimum grant to a satellite center, \$75,000, was not changed by the 1984 Amendments.

The 1984 Amendments specified that special projects are to expand and improve services to underserved groups of persons with developmental disabilities, including Native Americans and Native Hawaiians.



## THE 1987 AMENDMENTS

The Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987, P.L. 100-146 recognized and emphasized the capacity of the individual with developmental disabilities rather than limitations. Language used reflected the most up-to-date thinking on approaches for enabling persons with developmental disabilities to achieve their maximum potential through increased independence, productivity, and integration into the community. The Amendments also recognized the central role that family and members of the community, including friends and neighbors, can play in enhancing the lives of persons with developmental disabilities.

The 1987 Amendments also clarified and strengthened the independence of State Planning Councils to carry out their advocacy role under the act and refocused the activities the Council funds to include policy analyses and other activities that were most likely to have a positive impact on the systems which affect the greatest number of persons with developmental disabilities. The bill also amended the State plan to require States to review how they are meeting the needs of persons with developmental disabilities attributable to a physical impairment, a mental impairment, or a combination of physical and mental impairments. The bill also increased State flexibility in selecting priority areas in which to focus their efforts, and required Councils to develop a report to the Governor and to Congress on the status of services and supports to people with developmental disabilities.

Minimum allotments to States were increased from \$300,000 to \$350,000 by the 1987 Amendments when the appropriations level exceeds \$60,000,000. The Amendments authorize the Secretary to increase the minimum allotment administratively when the increase in the appropriations is greater than the Consumer Price Index.

The 1987 Amendments added several provisions designed to enhance the accountability of the protection and advocacy system by: ensuring that particular attention is paid to the needs of members of racial and ethnic minorities who are developmentally disabled, requiring the establishment of a grievance procedure, and providing the public with an opportunity to make public comment on the priorities established by the system.

The bill clarified that access to the records of a person with developmental disabilities applies to a person who resides or was abused or neglected while residing in a facility for persons with developmental disabilities. The bill also clarified the authority of the protection and advocacy system to investigate incidents of abuse and neglect reported to the system if there is probable cause to believe that the incidents reported occurred. These changes are consistent with comparable authority set out in the Protection and Advocacy for Mentally Ill Individuals Act of 1986, P.L. 99-319.

Minimum State allotments to protection and advocacy systems were increased under the Amendments from \$150,000 to \$200,000.

The 1987 Amendments retained the focus of the part of the legislation establishing university affiliated programs (UAPs), which are designed to assist in the provision of interdisciplinary training,

the demonstration of exemplary services and technical assistance and dissemination of information that will support the independence, productivity, and integration into the community of individuals with developmental disabilities.

Under the Amendments, universities were permitted to apply for funds to study the feasibility of establishing new UAPs and satellite centers and the Secretary of Health and Human Services was directed to consider expanding the number of UAPs and centers into unserved States. In addition, applicants were required to demonstrate the coordination between its activities and the activities conducted by the State under the State plan. Grants for training projects were authorized by the 1987 Amendments.

The Amendments created separate line items for core funding and for the funding of training grants. The minimum amount for core funding was established to be \$200,000 for university affiliated programs. Core funding appropriations were \$9,400,000 for fiscal year 1988, \$10,200,000 for fiscal year 1989, and \$11,000,000 for fiscal year 1990. For training grants to university affiliated programs, the Amendments authorized to be appropriated \$4,500,000 in fiscal year 1988, \$5,000,000 in fiscal year 1989, and \$5,500,000 in fiscal year 1990.

Finally, the Amendments renamed the special projects part of the bill to read "projects of national significance." Authorization was given to the Secretary to make grants to, or enter into contracts with, agencies and nonprofit entities for projects of national significance relating to persons with developmental disabilities to educate policymakers, develop an ongoing data collection system, determine the feasibility and desirability of developing a nationwide information and referral system, pursue interagency initiatives and other projects of sufficient size and scope which hold promise of expanding opportunities for persons with developmental disabilities. Under this section, \$3,650,000 was authorized to be appropriated for each of the fiscal years 1988-1990.

#### THE 1990 AMENDMENTS

The Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987, P.L. 100-496 focused on the capabilities, competencies, and preferences, as well as the needs of persons with developmental disabilities. The important role that the family and community can play in enhancing the lives of persons with developmental disabilities was emphasized. The provision of interdisciplinary training and technical assistance to professionals, paraprofessionals, family members and individuals with developmental disabilities, and protecting their legal and human rights were cited as important for assuring the provision of necessary support services aimed at creating opportunities for maximum independence.

The 1990 Amendments maintained and further strengthened the independence of the State Planning Councils to carry out advocacy, policy analysis, system enhancement and other activities under the Basic State Grant Program. The Amendments specified that the findings from the comprehensive review and analysis of services to people with developmental disabilities conducted by each State Planning Council, termed the "1990 Report," be used in State plan-

ning activities to assure that comprehensive services would be made available to identified unserved and underserved populations. The Amendments also expanded a Federal priority area and maintained State flexibility in selecting priority areas in which to focus activities.

The 1990 Amendments authorized to be appropriated for the Basic State Grant program \$77,400,000 for fiscal year 1991 and "such sums" for fiscal years 1992 and 1993.

The 1990 Amendments added several clarifying provisions regarding the role of the protection and advocacy systems in representing individuals with developmental disabilities and engaging in systems advocacy, the independence of the protection and advocacy systems, appointments to the governing board, the conditions under which protection and advocacy systems have access to records, and the process for redesignation of the State agency that implements the system.

The Amendments authorized to be appropriated for protection and advocacy systems \$24,200,000 for fiscal year 1991 and "such sums" for fiscal years 1992 and 1993.

The 1990 Amendments reaffirmed support for university affiliated programs (UAPs) which are designed to assist in the provision of interdisciplinary training, the demonstration of exemplary services and technical assistance, and the dissemination of information which increases and supports the independence, productivity, and integration into the community of persons with developmental disabilities. The Amendments permitted universities to apply for funds to study the feasibility of establishing new UAPs and satellite centers and directed the Secretary of Health and Human Services to consider expanding the numbers of UAPs and centers into unserved States as the first priority. In addition, the Amendments continued core funding for existing UAPs and created supplemental core funding for the purpose of training personnel to address the needs of persons with developmental disabilities in areas of emerging national significance. The Amendments provided for assuring the appropriateness and quality of such training activities. The Amendments required that UAPs create a consumer advisory committee.

Separate line items were established for core administrative funding and for core training grants. The Amendments authorized to be appropriated for core administrative funding \$11,000,000 for fiscal year 1991 and such sums for fiscal years 1992 and 1993. For core training funding, the Amendments authorized to be appropriated \$5,500,000 for fiscal year 1991 and "such sums" for fiscal years 1992 and 1993.

Finally, the 1990 Amendments authorized the Secretary to make grants to, or enter into contracts with, agencies and nonprofit entities for projects of national significance relating to persons with developmental disabilities to educate policymakers, develop an ongoing data collection system, determine the feasibility and desirability of developing an information and referral system, pursue inter-agency initiatives, and other projects of sufficient size and scope which hold promise of expanding opportunities for persons with developmental disabilities.

The Amendments authorized to be appropriated \$3,650,000 for fiscal year 1991 and "such sums" for fiscal years 1992 and 1993.

#### HEARINGS AND TESTIMONY

##### *Witnesses*

The Subcommittee on Disability Policy held a hearing on Tuesday, June 29, 1993 to consider the reauthorization of the Developmental Disabilities Assistance and Bill of Rights Act.

The first panel consisted of three individuals who exemplified new ways of thinking about individuals with developmental disabilities and their families, which are promoted by the Act: Mr. Lee Graber, Ms. Sue Swenson, and Ms. Debra Turner, accompanied by Nancy Weisenmiller.

Mr. Graber is the father of a young man with disabilities and the foster father of a young woman with disabilities. He is the president of Capability Teaching, a Chicago-based company that provides training and consultation services to community agencies serving individuals with developmental disabilities. Mr. Graber talked about some of the concepts that he bases his teaching on in workshops. He stressed the importance of valuing a person with developmental disabilities and building on what people can do, not what they can't do. He said that when people are valued, they can learn, and they can have ownership over their life, thoughts, feelings, dreams, likes, and dislikes. His training teaches staff to help people with developmental disabilities discover the value in themselves, to see a life, to see opportunities, and to have hope. He emphasized that the way to make a difference is to focus on one individual at a time.

Ms. Swenson of Minneapolis, MN, is the mother of three young sons, one of whom (Charlie) has disabilities. She is a graduate of a training program sponsored by the Minnesota Developmental Disabilities Council and designed to promote "consumer empowerment." She is also one of ten parents of adults with disabilities nationally to be trained as a member of peer review site visit teams for university affiliated programs. Ms. Swenson told about her personal story of empowerment. After participating in the Partners in Policy-Making training program, Ms. Swenson learned that instead of always trying to change Charlie, she needed to be working on changing the attitudes of ordinary people. She has worked with the school to get her son Charlie included in a regular school and in a regular class.

Ms. Turner lived in an institution from the age of 14 until the age of 33. Four years ago, Ms. Turner moved into a town house in Columbia, MD. Ms. Turner's roommate, Ms. Nancy Weisenmiller, accompanied Ms. Turner. Ms. Weisenmiller is a team leader at the Kennedy Krieger Institute, a university affiliated program, at Johns Hopkins University. The Institute is providing the services and supports that Debra needs to live independently.

Ms. Turner used slides to help her describe how her life has changed. She talked about her life in the institution with locked buildings, no decision-making power, and no opportunities to make choices. She then showed slides of her new town house, her elephant collection, her church, and where she worked. She also



showed slides of herself studying for her G.E.D., and relaxing in a hot tub during her vacation in Ocean City. Ms. Turner said that the best thing about her life in the community is being able to go out to a restaurant for breakfast, lunch or dinner any time she wants. Ms. Weisenmiller made the point that the State Developmental Disabilities Councils, protection and advocacy systems and the university affiliated programs are all demonstrating new approaches that build on the competencies, capabilities, and preferences of individuals with developmental disabilities. With the right services and supports, individuals with significant disabilities can lead independent, productive lives integrated and fully included into the community.

The second panel was composed of witnesses who were representatives of the Consortium for Citizens with Disabilities, and of the three programs created by the Developmental Disabilities Act: Mr. Steve Eidelman, Mr. John T. Porter, Ms. Sara Wiggins-Mitchell, and Ms. Ann Rhodes, accompanied by Dr. Al Healy.

Mr. Steve Eidelman, of Washington, DC is the Executive Director of the Kennedy Foundation. He spoke on behalf of the Developmental Disabilities Task Force of the Consortium for Citizens with Disabilities (CCD). The Task Force is comprised of national disability organizations, including advocates, parents, consumers, providers, and professional groups who are most concerned with and involved in the developmental disabilities program. Mr. Eidelman summarized the key recommendations of the CCD which centered around four themes: simplifying the language in the Act to be more "user-friendly"; strengthening the effectiveness and interdependence of the four programs authorized under the Act, increasing their autonomy from State government, and strengthening their accountability to the public; enhancing linkages to other related programs; and strengthening the programs' responsiveness to the changing needs of individuals with developmental disabilities and their families.

Mr. John T. Porter from Wood Dale, IL, spoke on behalf of the National Association of Developmental Disabilities Councils (NADDC). He is the Chairperson of the Illinois Developmental Disabilities Council, and represents State Council Chairpersons on the Board of NADDC. He is also the father of an adult son with developmental disabilities. Mr. Porter stressed the need for Council autonomy, flexibility, and accountability, and he discussed the importance of empowerment and systems change activities.

Ms. Sara Wiggins-Mitchell from Trenton, NJ spoke on behalf of the National Association of Protection and Advocacy Systems (NAPAS). She is the President of NAPAS, and the Director of the Division of Advocacy for the Developmentally Disabled in New Jersey (the Protection and Advocacy Program). Ms. Wiggins-Mitchell discussed the importance of increased consumer involvement in Protection and Advocacy Programs (P&As), the need for access to individuals with developmental disabilities, the need for an American Indian Consortium to serve individuals with developmental disabilities who reside on Indian lands, the need for greater stability in the allotments to P&As, the importance of client confidentiality, the need for flexibility, and the importance of technical assistance.

Ms. Ann Rhodes from Iowa City, IA spoke on behalf of the American Association of university affiliated programs. She serves as the Vice President of University Relations for the University of Iowa. She has been involved with the Iowa university affiliated program (UAP) for several years. Ms. Rhodes discussed the importance of consistency of the mission of a university and that of a UAP, the continuing need for training of personnel, the success of the training projects and the need to establish a training project at every UAP. Ms. Rhodes was accompanied by Dr. Al Healy, who is the Director of the university affiliated program at the University of Iowa.

### *Issues raised*

Based on the testimony provided during the hearing, additional written testimony submitted for the record, and discussions with all interested parties, a number of issues for consideration in developing amendments to the Act. Several themes emerged regarding the changes needed.

### *New ways of thinking about individuals with disabilities*

The Committee heard testimony about how the Developmental Disabilities Assistance and Bill of Rights Act has helped changed beliefs about individuals with developmental disabilities. Mr. Steve Eidelman, testifying on behalf of the Consortium of Citizens with Disabilities, testified that:

In the early 1970's Congress saw that people with developmental disabilities were being excluded from the few services that were available to individuals with disabilities and were specifically vulnerable to abuse and neglect. Since 1970, the Developmental Disabilities Act has helped lead the field away from an institutional mind-set to a belief that individuals with developmental disabilities must have the opportunity to live, work, and play in their own communities, and that States must have the capacity to support and foster these opportunities. With the passage of the landmark Americans with Disabilities Act, we as a nation affirm the rights of all Americans to live independent, productive lives. The draft DD Act reauthorization builds on these principles of inclusion and self-determination.

The Committee heard testimony from Ms. Sue Swenson, of Minneapolis, MN, who is a mother of a 10-year-old son with developmental disabilities. She described how her life and that of her family had changed as a result of her participation in an intensive training program offered by the State Developmental Disabilities Council. Ms. Swenson discussed how the program helped her to gain control of her life, to understand how she was the expert when it came to her son, and to advocate for the supports that her son and her family needed. She described her experience as one of empowerment. Ms. Swenson stressed the importance of changing attitudes if people with disabilities are to be included in society.

I was no longer working on fixing Charlie so my family could go back to the real world. Now I was working on changing the attitudes of all those ordinary people, so that

they would see the value of communities which include people with disabilities and all people \* \* \*. There are a lot of good people out there—policymakers, bureaucrats, academics, other parents, kids, neighbors—who want to do the right thing. They may need to hear what the right thing is a few times, and why it is right, but after they get it they dive right in. I was taught to challenge people, to help them understand, to show them a new way of thinking about people with disabilities. For people with disabilities, change really happens in their schools, neighborhoods, and families and in the hearts of all these fine and ordinary people. \* \* \* we must take it to the people, one by one, before the real changes happen.

Witnesses stressed the importance of incorporating new concepts into the Act. Mr. Eidelman stated that:

The Developmental Disabilities Act has always led the way in disability policy in defining state-of-the-art services and supports, and cutting edge concepts, and in using appropriate language when referring to people with developmental disabilities.

#### *Make the act "user-friendly"*

The Committee heard testimony about the need to make the Act more "user-friendly." Mr. Eidelman pointed out that because the Act is used as a training vehicle for disability policy, it is important to simplify the language and to use "people first" language. Mr. Porter said that it is important that the Act be made easier to understand because it " \* \* \* is a major educational tool for Council members, service providers, and policymakers at all levels \* \* \*".

#### *The Basic State Grant Program*

Part B of the Act provides Federal assistance to States for systemic change, capacity building and advocacy activities which assist in the development of a consumer and family-centered, comprehensive system and a coordinated array of services, formal and informal supports and other assistance. Activities conducted through the basic State grant program are organized through State Developmental Disabilities Councils.

A number of issues were raised regarding the State grant program.

#### *Autonomy*

Witnesses stressed the need for increased autonomy for State Developmental Disabilities Councils. Councils are advocates within State Government and as such, their policies and program directions need to be independent from any agency or office of the State.

#### *Council membership*

Witnesses discussed several issues regarding appointments to the State Development Disabilities Council. These included the need to ensure that appointments to the Council are made in a timely manner in order to avoid long-term vacancies which can reduce the effectiveness of the Council, the need for a nominations

process to assist the Governor in making appropriate appointments to the Council, and the need to ensure that State agency representatives on the Council have sufficient authority to speak for the agency.

### *Relationships with other Councils and Programs*

States have numerous Federally-assisted Councils and programs related to people with disabilities, including Interagency Coordinating Councils for Early Intervention, Mental Health Councils, and Parent Training and Information Centers. Testimony provided to the Committee noted the value of establishing linkages between the State Developmental Disabilities Council and other State councils, committees, and programs to increase the effectiveness of statewide planning across agencies and across disabilities.

### *Flexibility*

One witness emphasized that the flexibility of the Council program has allowed States to design activities most suited to their own needs and priorities. Mr. Porter stated that "This flexibility allows our programs to innovate, to try things that, if successful, lead the developmental disabilities movement into the future."

### *Empowerment*

Mr. Porter testified that "empowerment is central to the Council's mission \* \* \*. Councils have been leaders in supporting people with developmental disabilities and family members to control our own lives and become involved in the decisions that directly affect us." Mr. Porter noted that the Illinois Council, of which he is the Chairperson, has supported its Council members with disabilities "to ensure that they give their best to Council deliberations." He noted the importance of funding supports, like personal assistance services, to make it possible for consumer members to participate in the Council activities.

### *Protection and advocacy of individual rights*

Part C of the Act provides allotments to support a system in each State to protect the legal and human rights of individuals with developmental disabilities.

Several issues emerged during the hearing regarding the P&A system.

### *Consumer involvement*

Witnesses noted that increased consumer input into the P&A system through participation in governing boards, advisory councils and Federal program reviews, will enhance the responsiveness of the system to consumer's needs and will increase consumer input into the operation and priority-setting of the P&A in each State.

### *Access to individuals*

Ms. Wiggins-Mitchell discussed the problems faced by P&As in reaching some individuals who need P&A services. She noted that "Often, it is the people who are least able to communicate with our [the P&A system] advocates who have the greatest need for our services." She discussed the need for P&As to have access, at rea-



sonable times and locations, to individuals with developmental disabilities who reside in facilities. She pointed out that P&As have this authority, under OBRA 1987, with regard to individuals who live in nursing homes and who are eligible for P&A services.

### *American Indian Consortium*

Testimony by Ms. Wiggins-Mitchell discussed the problems in providing P&A services to American Indians with developmental disabilities who live on Indian lands in the Southwest. She stated that "isolation, as well as geographic, cultural, and legal differences, prevent their receiving adequate advocacy services from the current P&A systems."

### *Confidentiality of records*

Testimony supported the importance of client confidentiality, and the need to prohibit the Administration from requiring a program to disclose any personally identifiable information of individuals served by the program.

### *State restrictions*

Witnesses described situations in which P&As located within State agencies had been impacted by State restrictions on hiring and travel, even though the funds provided are Federal funds. This situation has affected the ability of P&As to carry out their mandate. Witnesses discussed the need to exempt P&As from State hiring freezes and travel restrictions and the need to allow P&As to use their Federal funds to hire qualified staff and to be able to travel to training and technical assistance activities funded under this Act.

### *State allotments*

Problems with the current formula used to determine the allotments to States for the State Developmental Disabilities Councils and the protection and advocacy systems were identified at the hearings. According to the testimony of Mr. Eidelman, "For some reason, when the formula is applied, even when appropriations increase, many State allotments are reduced in what appears to be a far greater percentage than changes in their population or per capita income would suggest." Witnesses discussed the need for a review of the formula.

### *University affiliated programs*

Under part D of the Act, grants are awarded to support a national network of university affiliated programs (UAPs). These programs prepare personnel, provide community training and technical assistance, provide state-of-the art services, and disseminate information. As noted by Ms. Rhodes in her testimony, "These activities [of a UAP], when compared to the mission of a university, reinforce the original wisdom of Congress to place these responsibilities regarding the needs of people with disabilities solidly in the heart of America's university system."

Ms. Rhodes pointed out that UAPs receive funding from many State and Federal sources, but the funding provided under this Act for administration and operation of the UAP permits the program

to leverage additional funding. Ms. Rhodes pointed out that "There is solid evidence that for every dollar invested in a UAP [under this Act] there is a \$28 return on that investment through expanded services and training programs."

A number of issues emerged during the hearing and for the record with regard to UAPs.

### *Definition*

Witnesses supported the need for an updating of the definition of the scope of activities of a UAP, to make it more consistent with the mission of a university.

### *Personnel shortages*

Witnesses noted that in order for individuals with developmental disabilities to have a greater opportunity to live independently in their communities, they must have access to appropriately trained personnel. Yet there are still significant personnel shortages in disciplines that are needed to provide services for individuals with developmental disabilities. In addition, there is a need to train professionals in new approaches such as working in partnership with individuals with disabilities and their families in their own communities, consumer empowerment, family support, individual support, and assistive technology.

### *Training Projects*

The testimony noted that the current UAP training projects are invaluable in ensuring that personnel are trained in new approaches. The benefits of adding a training project area related to the Americans with Disabilities Act was discussed.

### *Community training and technical assistance.*

The testimony supported the importance of community training and technical assistance provided by UAPs. Ms. Rhodes pointed out that these activities "have had the greatest impact on ensuring that State and local service delivery systems can adequately respond to the needs of individuals with disabilities."

### *Priorities for expansion*

The testimony noted the importance of ensuring access to the benefits of a UAP for citizens of every State. There are currently 57 UAPs in 49 States. Only Wyoming and the Virgin Islands remain unserved. Testimony also supported the goal of having a training project at every UAP, in light of the effectiveness of these projects. Other priorities of increasing the minimum funding levels for training initiatives and for core awards were also supported.

### *Projects of national significance*

Part E of the Act provides for grants for demonstration projects to increase and support the independence, productivity, integration and inclusion into the community of individuals with developmental disabilities. These grants are intended to focus on areas of key importance in the field of developmental disabilities. For example, grants have been funded to develop and maintain ongoing data collection systems, and to provide technical assistance to Developmen-

tal Disabilities Councils, State protection and advocacy systems, and university affiliated programs.

Testimony emphasized the importance of projects of national significance. Mr. Eidelman described this section of the Act as "the national research and development resource, funding cutting edge research and disseminating best practices nationwide."

### *Systemic change and individuals with disabilities*

Addressing the needs of people with disabilities other than developmental disabilities through the Developmental Disabilities Assistance and Bill of Rights Act was discussed by two witnesses. Mr. Porter noted that the work of all Councils affect, at least to some extent, people with disabilities. "For example, when we work to make transportation systems and public accommodations accessible, *all* people with disabilities benefit, not only those with developmental disabilities." He cautioned that people with developmental disabilities are often the most vulnerable, and that the Developmental Disabilities Program is the only program to specifically address the inequities for this population. He supported the pilot initiatives to assist in our understanding of the implications of expanding the population of focus for this Act.

In his testimony, Mr. Eidelman expressed the views of CCD as follows:

The new initiatives which address the relationship of the developmental disabilities community to the larger disabilities community are a significant and needed addition. There are 3 million people with developmental disabilities in the United States. There are 43 million Americans with disabilities. Many individuals with disabilities are interested in being included in the DD programs. To begin to address this matter, the CCD has recommended \* \* \* that the law look at whether the needs of people with disabilities other than developmental disabilities can be appropriately addressed by the DD programs. We believe that the pilot test approach \* \* \* is prudent, while beginning to respond to people with disabilities of later onset and of less severity than those with developmental disabilities.

### III. LEGISLATIVE CONSIDERATION AND VOTES IN COMMITTEE

S. 1284 was introduced on July 23, 1993, by Senator Harkin. Cosponsors include Senators Durenberger, Kennedy, Jeffords, Metzenbaum, Simon, Wellstone, and Wofford. At the request of all members of the Subcommittee on Disability Policy, the bill was considered directly by the Committee on Labor and Human Resources.

In an executive session of the Committee on Labor and Human Resources on Friday, July 30, 1993, the motion to favorably report the bill as introduced passed unanimously by voice vote of the Committee.

### IV. EXPLANATION OF THE BILL AND COMMITTEE VIEWS

Throughout the bill, there are a number of technical and conforming amendments to accomplish the following purposes. First, the language in the Act is amended so that it is consistent with the

language used in other Federal legislation, such as the Americans with Disabilities Act, the Rehabilitation Act of 1973, the Individuals with Disabilities Education Act, and the Technology-Related Assistance for Individuals with Disabilities Act. The word "individual" replaces the word "person," and "people first" language is used, so that the phrase "individual with a developmental disability" replaces the phrase "developmentally disabled individual." The Committee believes that consistency in the use of language across Federal disability legislation is important as we move toward a coordinated national disability policy.

Second, the majority of technical and conforming amendments in the bill are intended to make the Act more "user friendly" by adding headings for sections, subsections, paragraphs and subparagraphs, and by grouping related provisions of the Act together.

## TITLE I—PROGRAMS FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

### PART A—GENERAL PROVISIONS

#### FINDINGS, PURPOSE, AND POLICY

Section 102 of the bill amends section 101 of the Act to update Congressional findings and purpose and to add a policy statement for the Act. The statement of findings, purpose and policy is a reaffirmation of the precepts of the Americans with Disabilities Act. It is the Committee's intent that these principles guide the policies, practices and procedures developed under all parts of the Act.

Congress finds that—

(1) in 1993 there are more than 3 million individuals with developmental disabilities in the United States;

(2) disability is a natural part of the human experience and in no way diminishes the right of individuals with developmental disabilities to live independently, enjoy self-determination, make choices, contribute to society, and experience full integration and inclusion in the economic, political, social, cultural, and educational mainstream of American Society;

(3) individuals with developmental disabilities continually encounter various forms of discrimination in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting and public services;

(4) there is a lack of public awareness of the capabilities and competencies of individuals with developmental disabilities;

(5) individuals whose disabilities occur during their developmental period frequently have severe disabilities that are likely to continue indefinitely;

(6) individuals with developmental disabilities and their families often require specialized lifelong assistance, provided in a coordinated and culturally competent manner by many agencies, professionals, advocates, community representatives, and others to eliminate barriers and to meet the needs of such individuals and their families;

(7) a substantial portion of individuals with developmental disabilities and their families do not have access to appropriate



supports and services from generic and specialized service systems and remain unserved or underserved;

(8) family members, friends, and members of the community can play a central role in enhancing the lives of individuals with developmental disabilities, especially when the family and community are provided with the necessary services and supports; and

(9) the goals of the Nation properly include providing individuals with developmental disabilities with the opportunities and support to make informed choices and decisions; live in homes and communities in which such individuals can exercise their full rights and responsibilities as citizens; pursue meaningful and productive lives; contribute to their family, community, State and Nation; have interdependent friendships and relationships with others; and achieve full integration and inclusion in society.

The purpose of the Act is to assure that individuals with developmental disabilities and their families have access to culturally competent services, supports and other assistance and opportunities which promote independence, productivity, integration and inclusion into the community, through support to State developmental disabilities councils, protection and advocacy systems, university affiliated programs, and projects of national significance.

It is the policy of the United States that all programs, projects and activities receiving assistance under this Act shall be carried out in a manner consistent with the principles that—

(1) individuals with developmental disabilities, including those with the most severe developmental disabilities, are capable of achieving independence, productivity, and integration and inclusion into the community, and the provision of services, supports and other assistance can improve such individuals' ability to achieve independence, productivity, and integration and inclusion;

(2) individuals with developmental disabilities and their families are the primary decisionmakers regarding the services and supports such individuals and their families receive and play decisionmaking roles in policies and programs that affect the lives of such individuals and their families;

(3) individuals with developmental disabilities and their families have competencies, capabilities, and personal goals that should be recognized, supported and encouraged;

(4) services, supports and other assistance are provided in a manner that demonstrates respect for individual dignity, personal preferences, and cultural differences;

(5) communities accept and support individuals with developmental disabilities and are enriched by the full and active participation and the contributions by individuals with developmental disabilities and their families; and

(6) individuals with developmental disabilities have the opportunities and necessary support to be included in community life, have interdependent relationships, live in homes and communities, and make contributions to their families, community, State and Nation.

The phrase "individuals with developmental disabilities and their families" is included in this section of the bill and in numerous other places throughout the Act. The Committee recognizes the critical role played by parents, family members, guardians, advocates, or authorized representatives can play in supporting individuals with developmental disabilities. The Committee notes, however, that many adults with developmental disabilities can represent themselves and are competent to decide the level of involvement of family members or advocates which they desire. Parents, family members, guardians, advocates, or other authorized representative should be involved to the extent that such adults request, desire, or need such support.

#### DEFINITIONS

Section 103 of the bill amends section 102 of the Act to clarify and update definitions and to add new definitions and delete definitions that are obsolete. The definitions are alphabetized.

#### *American Indian Consortium*

Section 102 is amended by inserting the following new definition:

The term "American Indian Consortium" means any confederation of two or more recognized American Indian tribes, created through the official action of each participating tribe, that has a combined total resident population of 150,000 enrolled tribal members and a contiguous territory Indian lands in two or more States.

#### *Community living activities*

Section 102 amends the definition of "community living activities" to read:

The term "community living activities" means such priority area activities as will assist individuals with developmental disabilities to obtain and receive the supports needed to live in their family home or a home of their own with individuals of their choice and to develop supports in the community.

This revised definition replaces the phrase "suitable residential arrangements" with the phrase "their family home or a home of their own with people of their choice," in order to reflect new developments in the area of community living. The Committee notes the successes experienced in many States through the Community Supported Living Arrangements program under Medicaid in which no more than three individuals with developmental disabilities may live together in a home of their choice with individually tailored supports provided by people of their choice.

#### *Developmental disability*

Section 102 is amended by replacing the phrase "care, treatment and other services" with the phrase "services, supports and other assistance" in the definition of developmental disability. This change is made solely to incorporate modern terminology usage.

This language change is not intended to alter the use of the definition of developmental disability in any way.

### *Early intervention services*

Section 102 amends the definition of "early intervention services" to read:

The term "early intervention services" means services provided to infants, toddlers, young children and their families to—

(A) enhance the development of infants, toddlers and young children with disabilities and to minimize their potential for developmental delay; and

(B) enhance the capacity of families to meet the special needs of their infants, toddlers and young children.

The Committee notes that the definition has been amended to reflect the purpose of part H of the Individuals with Disabilities Education Act.

### *Family support services*

The bill makes only technical and conforming amendments to the definition of "family support services." The Committee recognizes that family support services is a rapidly evolving program across the States. The original concept of family support grew out of the concept of permanency planning to assure that children grew up in a family home. As States continue to expand their family support programs, the Committee urges that these programs recognize that when individuals with developmental disabilities reach the age of majority, the focus of support should shift to the adult with a developmental disability who may continue to live in the family home.

### *Integration and inclusion*

The bill replaces the term "integration" with the phrase "integration and inclusion," and provides the following definition:

The term "integration and inclusion", with respect to individuals with developmental disabilities, means—

(A) the use by individuals with developmental disabilities of the same community resources that are used by and available to other citizens;

(B) living in homes close to community resources, with regular contact with citizens without disabilities in their communities;

(C) the full and active participation by individuals with developmental disabilities in the same community activities and types of employment as citizens without disabilities, and utilization of the same community resources as citizens without disabilities, living, learning, working, and enjoying life in regular contact with citizens without disabilities; and

(D) having friendships and relationships with individuals and families of their own choosing.

This amendment expands the current definition by adding the phrase "full and active" in clause "C."

### *Other organizations*

Section 102 is amended by inserting the following new definition:

The term "other organizations" means those organizations that are not State agencies or nonprofit agencies, except that such organizations may be consulting firms, independent proprietary businesses and providers, and local community groups not organizationally incorporated, and that are interested in supporting individuals with developmental disabilities.

### *Personal assistance services*

Section 102 is amended by inserting the following new definition:

The term "personal assistance services" means a range of services, provided by one or more individuals, designed to assist an individual with a disability to perform daily living activities on or off a job that such individual would typically perform if such individual did not have a disability. Such services shall be designed to increase such individual's control in life and ability to perform everyday activities on or off such job.

The Committee notes that the definition is taken from the Rehabilitation Act Amendments of 1992. The need for sufficient, affordable personal assistance services (PAS) has emerged as a major disability issue since the passage of the Americans with Disabilities Act in 1990. PAS includes such services as essential home services (e.g., meal preparation), personal assistance (e.g., bathing and dressing), communication services, work-related support services and mobility services. These services are not currently widely available or affordable to individuals with disabilities. Concern over this issue by Congress resulted in the inclusion of language in the Omnibus Budget Reconciliation Act of 1992 recommending that the Administration on Developmental Disabilities establish a Federal interagency work group on PAS. Since its establishment last September, the Work Group has met three times and currently includes representatives from 20 Federal agencies. As a first step toward achieving the goals of developing alternative funding mechanisms for PAS (across Federal agencies) and exploring possible PAS demonstrations, the Work Group is compiling a compendium of information on Federal programs which impact on PAS. Future activities of the Work Group are expected to center on facilitating the transformation of the service delivery system for PAS into one that is accessible and consumer-oriented.

### *Rehabilitation technology*

The bill substitutes the phrase "rehabilitation technology" for the phrase "assistive technology" and provides the following definition:

The term "rehabilitation technology" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address



the barriers confronted by, individuals with developmental disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. Such term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

The Committee notes that the definition was taken from the Rehabilitation Act Amendments of 1992.

#### *Service coordination activities*

The phrase "case management activities" is replaced with the term "service coordination activities" and the definition is amended as follows:

The term "service coordination activities" (also referred to as "case management activities") means activities that assist and enable individuals with developmental disabilities and their families to access services, supports and other assistance, and includes—

(A) the provision of information to individuals with developmental disabilities and their families about the availability of services, supports, and other assistance;

(B) assistance in obtaining appropriate services, supports, and other assistance, which may include facilitating and organizing such assistance;

(C) coordination and monitoring of services, supports, and other assistance provided singly or in combination to individuals with developmental disabilities and their families to ensure accessibility, continuity, and accountability of such assistance; and

(D) follow-along services that ensure, through a continuing relationship, that the changing needs of individuals with developmental disabilities and their families are recognized and appropriately met.

The amended definition is based on "assisting and enabling" individuals and families to access services, supports and other assistance. The Committee intends to emphasize the fact that individuals and their families are the primary decisionmakers regarding the services and supports they receive.

#### *State*

Section 102 is amended by inserting the following new definition:

The term "State" includes, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau (until the Compact of Free Association with Palau takes effect).

The definition has been amended to conform with the definition of "State" in the Rehabilitation Act of 1973 as amended by the Rehabilitation Act Amendments of 1992.

### *State developmental disabilities council*

Section 102 replaces the term "Developmental Disabilities Planning Council" with the term "State Developmental Disabilities Council." The Committee recognizes that planning continues to be one of the important functions of State Developmental Disabilities Councils. However, the Council has a broader set of functions described in this bill as systemic change, capacity building and advocacy.

### *Supported employment*

The definition of "supported employment" is amended to read as follows:

The term "supported employment" means competitive work in integrated work setting for individuals with developmental disabilities—

(A)(i) for whom competitive employment has not traditionally occurred; or

(ii) for whom competitive employment has been interrupted or intermittent as a result of a severe disability; and

(B) who, because of the nature and severity of their disability, need intensive supported employment services or extended services in order to perform such work.

The Committee notes that definition of "supported employment" is amended to conform with the definition in the Rehabilitation Act Amendments of 1992.

### *System coordination and community education activities*

The definition of "system coordination and community education" is amended to read as follows:

The term "system coordination and community education activities" means activities that—

(A) eliminate barriers to access and eligibility for services, supports, and other assistance;

(B) enhance systems design, redesign, and integration, including the encouragement of the creation of local service coordination and information and referral statewide systems;

(C) enhance individual, family and citizen participation and involvement; and

(D) develop and support coalitions and individuals through training in self-advocacy, educating policy makers and citizen leadership skills.

The Amendments add "redesign and integration" to (B), and add a new (D) to clarify that this term includes self-advocacy and leadership skills.

### *Systemic advocacy*

Section 102 is amended by inserting the following new definition:

The term "systemic advocacy" means activities that identify, support, and recommend improvements in the plan-

ning, design, redesign, structure, delivery or funding of generic or specialized services and supports.

### *University affiliated program*

The definition of "university affiliated program" is amended to read as follows:

The term "university affiliated program" means university affiliated program established under section 152.

The Committee notes that the purpose and scope of a "university affiliated program" is provided in section 152.

Section 102 is amended by eliminating definitions for the following terms:

### *Construction*

A definition for the term "construction" is no longer necessary because construction costs are not eligible costs under this Act. Current law provides the right of recovery, for a period of 20 years, for facilities for which part B or part D funds were used toward construction costs. It is the Committee's understanding that all such facilities have been completed for more than 20 years.

### *Title*

Since construction costs are not eligible costs under this Act, a definition for the term "title" is not necessary.

### *Priority area activities*

Current law defines "priority area activities" by describing the types of strategies used by State Developmental Disabilities Councils to accomplish their purpose. The bill inserts descriptions of such strategies in section 124, making the definition of this term unnecessary.

### *Satellite center*

The term satellite center is eliminated in the bill. This concept was originally introduced in 1975 to extend the expertise of existing university affiliated programs to States and regions unserved by a university affiliated program. Satellite centers eventually became independent university affiliated programs. The Committee notes that significant progress has been made in reaching the goal of establishing a university affiliated program in every State, making new satellite centers unnecessary. The Committee intends that any existing satellite centers shall be designated as university affiliated programs.

## FEDERAL SHARE

Section 104 repeals section 103 of the Act. These provisions are moved to part B and part D.

## RECOVERY

Section 106 of the bill repeals section 105 of the Act. The Committee understands that all facilities for which part B or part D funds had been used toward construction costs, have been com-

pleted for more than 20 years, making section 105 no longer relevant.

#### STATE CONTROL OF OPERATIONS

Section 107 amends section 106 by striking "facility for persons" and inserting "programs, services and supports for individuals." This language conforms to the Rehabilitation Act of 1973, as amended by the Rehabilitation Act Amendments of 1992.

#### REPORTS

Section 108 of the bill amends section 107 of the Act by striking the word "each" each time the word appears in 107(a)(4), by striking "plan" and inserting "plans" and by striking "report" and inserting "reports." Current law requires the Council to describe their response to significant actions taken by the State with respect to each annual survey report and each correction and reduction plan, within the Intermediate Care Facility for the Mentally Retarded (ICF/MR) program. The Committee heard views that this provision can require a great deal of staff time to review and analyze these reports and plans. In addition, a review of each survey report, and each correction and reduction plan does not provide information (without extensive analysis) that is helpful to the Council in their systemic change, capacity building and advocacy activities. However, the Committee feels that it is important to maintain the requirement that Councils respond to significant developments in, and problems with, the ICF/MR program since a large number of individuals with developmental disabilities, including those with the most severe disabilities, are served by this program. The Amendments would allow Councils to selectively review the reports and plans, and to utilize summary data that may be available through the Regional Offices of the Department of Health and Human Services.

Section 107(a)(4) is also amended by striking "1902(a)(31)(C)" and inserting "1902(a)(31)(C)." This is simply a more general reference and does not change the intent of this provision.

Section 107(a)(5) is amended by inserting a provision that Councils, in their annual report, describe systemic change, capacity building and advocacy activities that affect individuals with disabilities other than developmental disabilities. The Committee understands that many of the efforts of the Council result in benefits for all individuals with disabilities. For example, Council activities directed at making transportation more accessible for individuals with developmental disabilities will almost always assist individuals with disabilities other than developmental disabilities. The Committee feels that requiring Councils to report on such activities will increase our understanding of the broad impact of the Council.

Two new provisions are added to section 107(a). First, the State Developmental Disabilities Councils must include in their annual report to the Secretary, a description of the resources leveraged as a result of Council activities. Since a major role of Councils is to be a catalyst for new services and supports, this provision would provide a focus for evaluating program effectiveness in this area. While it is rarely the case that Councils are solely responsible for obtaining additional resources and that frequently such leveraging



can take several years to be realized, it is possible and desirable for Councils to track the results of their work in systemic change.

Second, the annual report of the Council must include a description of the Council's dissemination plans for the annual report. The dissemination efforts must target affected constituencies and the general public and must be available in accessible formats.

Section 107(b) is amended to require the protection and advocacy systems to include in their annual report to the Secretary a description of the system's priorities for the year, the process used to obtain public input, the nature of the input, and how it was used.

Section 107(c) is amended by inserting the requirement that the Secretary must, in the annual report, describe systemic change, capacity building and advocacy activities that affect individuals with disabilities other than developmental disabilities.

#### EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES

Section 110 amends section 109 of the Act by striking "Handicapped Individuals" in the section heading and inserting "Individuals with Disabilities," and by striking "rehabilitation facilities" and inserting "community rehabilitation programs."

### TITLE II—FEDERAL ASSISTANCE FOR PRIORITY AREA ACTIVITIES FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

#### PART B—FEDERAL ASSISTANCE TO STATE DEVELOPMENTAL DISABILITIES COUNCILS

##### PURPOSE

Section 202 of the bill amends section 121 of the Act to read:

The purpose of this part is to provide for allotments to support State Developmental Disabilities Councils in each State to promote, through systemic change, capacity building, and advocacy, the development of a consumer and family-centered, comprehensive system and a coordinated array of services, supports and other assistance designed to achieve independence, productivity, and integration and inclusion into the community for individuals with developmental disabilities.

The concepts of systemic change, capacity building, and advocacy are included in the purpose statement in Section 121 for Developmental Disabilities Councils to reflect the overall role of the Council. Also the concept of consumer and family-centered are added by the bill to reflect the principles that services, supports and other assistance should be provided in a manner that demonstrates respect for individual dignity, personal preferences, and cultural differences, and that individuals with developmental disabilities and their families are the primary decisionmakers regarding the services, supports and other assistance they receive.

## STATE PLAN

Section 203 of the bill makes several modifications and additions to the State plan under section 122 of the Act. This section is significantly reorganized to group related provisions together.

*Comprehensive review and analysis*

The section on review and analysis includes existing provisions regarding descriptions of services, supports and other assistance provided under other Federally-assisted State programs; the extent of interagency initiatives in the State; and the need for the Federal priority areas and an optional State priority area. Children's mental health has been added as one of the Federally-assisted State programs to be reviewed by the Council, as part of the Council's planning efforts.

*Plan objectives*

All of the requirements regarding the selection of priority areas, description of 1-year and 3-year objectives, and the evaluation of the plan's effectiveness in meeting the objectives are included in this section.

*Assurances*

The State plan assurances are grouped together and new assurances are added to: require that service demonstration projects funded by the Council through the designated State agency have been authorized by the Council; specify the activities that may be funded by part B from funds other than those required to be spent on priority area activities by adding "other activities relating to systemic change, capacity building and advocacy to implement the responsibilities of the State Developmental Disabilities Council"; require the Council to adopt a conflict of interest policy to ensure that an individual Council member will not vote on matters that would provide financial benefit to that member or give the appearance of a conflict of interest; assure that Council staff, who are funded by Council funds, are responsible solely for assisting the Council in carrying out its responsibilities and are not assigned other duties by the designated State agency; and assure that the designated State agency does not interfere with the activities and responsibilities of the Council. In addition, the assurance in current law requiring that individuals receiving services funded under this part have a habilitation plan is amended to require that such services are provided in an individualized manner, consistent with unique strengths, resources, priorities, concerns, abilities, and capabilities of an individual.

*Public review, submission and approval*

The bill includes new provisions regarding the public review, submission and approval of the State plan. These provisions include in statute what is currently in regulation and clarify that the Council consults with the designated State agency on the State plan only to obtain assurances and to ensure that the plan is consistent with State law.

## HABILITATION PLANS

Section 204 of the bill repeals section 123. The bill eliminates this section because it is not relevant for a program that does not provide direct treatment or habilitation services to individuals. Instead, a provision is included in the assurances that grantees that provide any direct services funded under part B will be provided in an individualized manner, consistent with unique strengths, resources, priorities, concerns, abilities, and capabilities of an individual.

### STATE DEVELOPMENTAL DISABILITIES COUNCILS AND DESIGNATED STATE AGENCIES

Section 205 of the bill makes several modifications and additions to section 124 of the Act.

#### *Council membership*

The Committee is concerned that some Councils are experiencing difficulties in fulfilling their responsibilities due to problems with Council membership, rotation, vacancies and appointments. The bill includes several amendments to address this concern.

#### *Council appointments*

The bill requires that the Governor shall solicit recommendations for Council membership from the non-State agency members of the Council and from organizations representing individuals with developmental disabilities and that the Council membership must be geographically representative of the State and must reflect the racial and ethnic diversity of the State. It is the Committee's intent that Councils would solicit, on behalf of the Governor, the names and resumes of interested individuals with respect to the categories of membership that are vacant. Appointments would remain solely at the discretion of the Governor.

#### *Membership rotation*

Because there are frequently delays in Council appointments, the bill specifies that Council members shall serve until their replacements are appointed and that Councils notify the Secretary of significant delays in appointments. This provision is intended to assure that Councils are not prevented from conducting business due to delays in member appointments.

#### *Representation of agencies and organizations*

The bill requires that the individuals representing the agencies and organizations on the Council must have the authority to engage in policy, planning and implementation on behalf of the agency they represent. In many cases, the State agency representatives who serve on the Council are not in policy positions. This hinders the ability of the Council to carry out its responsibilities. The bill also requires that these representatives recuse themselves from any discussion of grants or contracts for which their agencies are grantees or applicants.

### *Representation of individuals with developmental disabilities*

The bill specifies that the Council members representing individuals with developmental disabilities may include parents or guardians of children with developmental disabilities, or immediate relatives or guardians of adults with mentally impairing developmental disabilities who can not advocate for themselves. This amendment recognizes the fact that many adults with developmental disabilities can advocate for themselves and therefore should represent themselves on the Council.

The bill also allows individuals with developmental disabilities or parents of individuals with developmental disabilities who are board members of non-profit grantee or potential grantee organizations to serve on the Council. Current law excludes from Council membership individuals who are Board members of non-profit grantee or potential grantee organizations. This has tended to exclude many qualified individuals from serving on the Council. The Committee's intent is that these individuals be eligible for Council membership and adhere to the conflict of interest policies of the Council.

### *Institutionalized individuals*

The bill specifies that the representative of institutionalized individuals on the Council may be an individual with a developmental disability who resides or previously resided in an institution. It also waives the requirement that a representative of such individuals be a member of the Council, if such individuals do not reside in a State. This provision recognizes that States are beginning to phase out their institutions and that several States do not now have large institutions.

### *Council responsibilities*

Section 205 of the bill amends section 124 of the Act by incorporating the provisions describing the Council's responsibilities into one section, and adding or modifying the following provision:

#### *Systemic change, capacity building and advocacy*

The bill specifies that the Council shall serve as an advocate for individuals with developmental disabilities and conduct programs, projects and activities that carry out the purpose of the Council.

#### *State plan development*

The bill specifies that the purpose of the consultation with the designated State agency is solely to obtain State assurances and to ensure consistency of the plan with State law. The Committee notes that the designated State agency does not have oversight of programmatic priorities included in the State plan.

#### *State plan implementation*

The types of strategies that Councils may use to implement the State plan are described. The bill states that Councils may assist grantees who are conducting successful demonstration activities to develop strategies for securing funding from other sources. Also, to the extent that Councils conduct training activities, such activities



must be designed to promote the empowerment of individuals with developmental disabilities and their families.

The bill specifies several other implementation strategies that Councils may use to implement the State plan. A provision is added to address the need to support local networks to provide informal and formal supports and enabling communities to offer access, resources and opportunities. The bill specifies interagency collaboration and coordination as strategies to implement the State plan.

A new provision is added that describes, as an implementation strategy, coordination with related councils, committees and programs concerned with individuals with disabilities. The Committee notes that State Developmental Disabilities Councils have significant experience with systemic change, capacity building and advocacy and that these Councils can serve as an excellent resource to other State Councils. In addition, coordination of efforts among the various disability-related councils can help shape a more unified State disability policy.

Another implementation strategy specified in the bill is the elimination of barriers, the design and redesign of systems, and increasing citizen participation. These strategies are included in the definition of the priority area of "systems coordination and community education."

Public education and coalition development are specified in the bill as plan implementation strategies. The Committee notes the importance of this strategy, and particularly public education, in light of the finding that there is a lack of public awareness of the capabilities and competencies of individuals with developmental disabilities.

Another implementation strategy is that of informing policy makers. The bill incorporates language from the current law and adds clarifying language that specifies the types of policymakers that may be provided with information by the Council.

The bill includes prevention activities as defined in section 102 of the Act as a strategy to implement the State plan.

Finally, the bill states that the Council may conduct other systemic change, capacity building and advocacy activities to expand and enhance the independence, productivity, and integration and inclusion into the community of individuals with developmental disabilities throughout the State on a comprehensive basis.

### *Review of Designated State Agency*

The bill requires that the Council periodically review the appropriateness of the designated State agency and make any recommendations for change to the Governor. The Committee notes that by requiring a periodic review of this issue, it may be possible to avoid reviews resulting from crisis or major controversy.

### *Budget*

The bill specifies the responsibilities of the Council with regard to preparing, approving and implementing a budget. A description of the types of expenditures that can be paid for by part B funds is provided, including conducting such hearings and forums as the Council may determine to be necessary to carry out the duties of

the Council, reimbursing Council members for necessary expenses for attending Council meetings and performing Council duties, paying compensation to a Council member if such member is not employed or must forfeit wages from other employment, and supporting member and staff travel to authorized training and technical assistance activities. The language for this provision is based on language from the Rehabilitation Act Amendments of 1992.

The bill also specifies that Federal funds may be used to hire qualified staff to carry out the functions of the Council, and the State shall not apply hiring freezes, reductions in force, prohibitions on staff travel, or other policies which negatively affect the provision of staff support to the Council. Most Council staff members are State public employees, but personnel costs and travel expenses are covered by Federal funds. State policies have sometimes prevented Councils from utilizing funds allotted under this Act. Currently, some Councils are prevented from: hiring new Council staff and filling vacancies if State Governments have placed a freeze on hiring; maintaining qualified staff with extensive experience in developmental disabilities when reduction in force policies are applied; and traveling when travel restrictions are applied. If adequate staff are not available to Councils, and if travel is not allowed, Councils are prohibited from carrying out their responsibilities in a timely and effective manner. It is the Committee's intent that Councils maintain the authority to hire and maintain staff when such staff are paid from funds allotted under this Act, even when the State has invoked a freeze on State hiring or a reduction in force. In addition, the Committee intends that Councils maintain the authority to conduct related travel, when the expenses of the travel are paid from funds under this Act, even when the State has invoked a freeze on travel.

The bill clarifies that the Council has the authority to direct the expenditure of funds through grants, contracts, as well as inter-agency agreements, to the extent that such agreements are considered binding contracts under State law.

The responsibilities of the Council in terms of staff hiring and supervision are further specified. The Council is responsible for hiring the director of the Council should the position become vacant. The Council shall also supervise and evaluate the Director. The Director is responsible for hiring and supervising the Council staff. Dismissal for any personnel may be only for cause and must be adequately documented.

The bill includes a provision that nothing in this part precludes Councils from engaging in systemic change, capacity building and advocacy activities for individuals with disabilities other than developmental disabilities. The Committee is aware of the fact that Councils frequently conduct systemic change, capacity building and advocacy activities regarding public policy issues which transcend the population of individuals with developmental disabilities. Several examples include activity surrounding the implementation of the Americans with Disabilities Act, health care reform initiatives, and transportation issues, all of which affect individuals with disabilities other than developmental disabilities. The Committee would like to make clear that Councils are authorized to conduct such generic activities that may benefit all individuals with disabil-

ities. However, it is not the Committee's intent to require Councils to perform systemic change, capacity building, and advocacy initiatives aimed solely at disabilities which are not developmental disabilities.

### *Designated State agency*

Section 205 of the bill amends section 124 of the Act by incorporating all of the provisions regarding the designated State agency in one subsection.

### *Redesignation*

The bill adds a reference to the role of the State legislature in the redesignation process, because in some States the legislature, not the Governor, has responsibility for designation.

The bill replaces the phrase "administrative support services" with the phrase "support services" to describe the type of services that are provided to the Council by the designated State agency. The Committee intends to emphasize the independence of the Council in fulfilling its responsibilities.

If the Council requests a review by the Governor of the designated State agency, the bill requires that the Council provide documentation of the reason for change and recommend a preferred designated State agency.

The bill provides that a majority of the non-State agency members of the Council may appeal to the Secretary for a review if the Council's independence as an advocate is not assured.

### *Responsibilities*

The responsibilities of the designated State agency are consolidated in one section. The bill requires the designated State agency to provide timely financial reports at the request of the Council and, upon the request of the Council, to enter into a memorandum of understanding specifying its roles and responsibilities to the Council program.

The bill includes a provision that allows Councils (with the agreement of the designated State agency) to use and/or contract with agencies other than the designated State agency for needed support services.

## 1990 REPORT

Section 124 is amended to move all provisions related to the report required on January 1, 1990 to one section. The reviews, analyses and final reports continue to be used as an important source of information for Council planning efforts.

## STATE ALLOTMENTS

Section 206 of the bill amends section 125 of the Act by holding each State harmless at the higher of the fiscal year 1992 or fiscal year 1993 levels, with a ratable reduction if funds are not adequate. The bill sets minimum funding levels of \$210,000 for American Samoa, Guam, the Virgin Islands, Northern Mariana Islands and Palau, and \$400,000 for other States if the appropriation is less than \$75,000,000. For appropriations greater than

\$75,000,000, the minimum funding levels are set at \$220,000 and \$450,000, respectively.

The Committee's intent is to protect Councils from significant reductions in allotments, unless the total appropriation is reduced. In the past few years, Councils have experienced fluctuations in allotments that do not seem to be related to the total appropriation, or to changes in formula factors. These unanticipated fluctuations make it difficult for Councils to plan and to implement their responsibilities.

The Committee intends that the State allocations will be calculated as follows. First, the formula will be applied to all States. Second, individual State allotments will be increased, if necessary, to reach either (a) the hold harmless level (the higher of fiscal year 1992 or 1993 allotments), or (b) the minimum allotments specified in the bill (whichever is higher). Third, if after completing the second step the total of the individual allotments exceeds the appropriation, the allotments will be ratably reduced, except that no States shall receive less than the hold harmless level (the higher of fiscal year 1992 or 1993 allotments), or the minimum allotments specified in the bill (whichever is higher).

Section 125 is amended by adding a requirement that the Secretary include the percentage of the total appropriation for each State in the required notification of adjustments 6 months prior to the beginning of the fiscal year.

#### FEDERAL AND NON-FEDERAL SHARE

Section 207 of the bill adds a new section 125A on Federal and non-Federal share. This section groups together related provisions from current law, including the provision on non-duplication. The bill adds two new provisions—a waiver of the non-Federal share requirement when Council members and staff are the implementing agents of State plan priority activities and a clarification that Councils may vary the non-Federal share required on a grant-by-grant basis, as long as the total non-Federal share meets the statutory requirements.

#### REVIEW, ANALYSIS AND REPORT

Section 213 of the bill directs the Secretary to (1) review and analyze the current allotment formula under parts B and C, including the factors, data elements and measures, to determine whether the formula used is consistent with the purpose of the Act, (2) identify alternative funding formulas, consistent with the purpose of the Act, and (3) report back to the relevant Committees in the Senate and the House no later than October 1, 1995.

The Committee has a number of concerns regarding the current allotment formula and its application. The Committee has reviewed information that shows fluctuations in allotments to individual States that do not seem to be related to changes in appropriations or changes in population. In addition, the Committee notes great variation in funding levels for States with similar numbers of individuals with disabilities. Some States receive up to five times of the amount of funding as other States, even when the populations of individuals with disabilities in each State (based on a proxy of the number of students with disabilities enrolled under part B) are



similar. Despite the Committee's best efforts, it is not clear whether these fluctuations and variations are due to the way in which the formula is calculated, or actual variations in the data elements and measures used. In addition, the Committee has determined that a comprehensive review of the current formula, the factors, data elements, and measures is necessary for reasons described below.

Current law does not specify the formula in statute, but rather describes the factors (population, need for services and financial need) to be taken into consideration in calculating allotments for States. These factors were identified at a time when it was intended that part B of the Act would eventually authorize the provision of direct services. Over the past twenty years, the purpose of part B has shifted to focus on systemic change, capacity building and advocacy, as opposed to the provision of services directly. The Committee intends that the formula be reviewed to determine if the factors currently specified in the Act, and the data elements and measures used, reflect the current purposes of part B.

Furthermore, part C (Protection and Advocacy of Individual Rights) serves a very different purpose in that programs authorized under part C do provide direct protection and advocacy services to individuals with developmental disabilities. The Committee intends that Secretary conduct a separate review of the formula, factors, data elements and measures for part C.

The Committee encourages the Secretary to complete the review, analysis and report internally.

#### AUTHORIZATION OF APPROPRIATIONS

The bill authorizes to be appropriated \$77,400,000 for fiscal year 1994, and such sums for fiscal year 1995 and 1996.

### TITLE III—PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

#### PART C—PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

##### SYSTEM REQUIREMENTS

Section 303 of the bill amends section 142 of the Act by adding or modifying several requirements for Protection and Advocacy (P&A) systems.

##### *Opportunity to comment on the protection and advocacy system*

Section 142(a) is amended to further specify the categories of individuals and groups that shall have an opportunity to comment on the objectives, priorities and activities of the P&A system by replacing the phrase "the developmental disabilities council" with the phrase "non-State agency representatives of the State Developmental Disabilities Council." The Committee intends to eliminate any potential conflict of interest that may be created by requiring representatives of State agencies to comment on the priorities, objectives and activities of the P&A system.

The bill also replaces the phrase "individuals with developmental disabilities" with the phrase "individuals with developmental dis-

abilities attributable to either physical impairment, mental impairment, or a combination of physical and mental impairments."

The Committee wishes to clarify that all individuals who meet the definition of developmental disability are eligible for the services of the P&A system. The Committee has heard concerns that some children with serious emotional disturbance have been denied access to P&A system services on the basis that the P&A systems authorized under this Act do not cover this disability. The Committee wishes to clarify that even though some children with serious emotional disturbance may qualify for P&A system services through the PAIMI (Protection and Advocacy for Individuals with Mental Illness) program, other children not covered by PAIMI are eligible for services under the Developmental Disabilities Assistance and Bill of Right Act, provided they meet the definition of developmental disability. The existence of PAIMI does not remove the obligation of the P&A systems to determine whether children with serious emotional disturbance are eligible under this Act.

#### *Coordination with other advocacy programs*

Current law requires that the P&A system provide an opportunity for public comment on the P&A system's coordination with specific advocacy programs. Section 142(a) is amended by adding three additional related advocacy programs, including Parent Training and Information Centers, education ombudsman programs, and assistive technology projects.

#### *Access to residents of a facility*

The bill adds a new provision to section 142(a) of the Act to provide for the P&A system to have access at reasonable times and locations to individuals with developmental disabilities who reside in a facility that provides services, supports and other assistance. This requirement is similar to the authority provided in the Social Security Act under the Omnibus Reconciliation Act of 1987 which provides access for P&A systems to individuals residing in nursing homes. The Committee intends to clarify that the P&A system has access to individuals with developmental disabilities who reside in residential programs. This will assure that the most vulnerable individuals who may not be able to contact the P&A system will have access to protection and advocacy services. Of course, individuals with developmental disabilities will have the right to not take advantage of the services of the protection and advocacy services. This is consistent with the policy included in PAIMI.

#### *State budgetary restrictions*

The bill adds a new requirement to section 142(a) of the Act to assure that P&A systems have the flexibility to hire and maintain sufficient numbers and types of qualified staff to carry out their function and that States shall not apply restrictions regarding hiring freezes, reductions in force, or other policies which negatively affect the provision of staff support to the P&A system. Additionally the State shall not apply restrictions to travel to training and technical assistance activities funded under this Act.

The Committee is aware of experiences of certain P&A systems that are administered by State agencies that have had difficulty in

spending their Federal funds to carry out the requirements of the P&A system due to State budget policies which restrict the use of funds. The Committee intends that the Federal funds authorized under this Act be available to hire qualified staff, fill vacancies as they occur, and support travel to training and technical assistance activities funded under this Act.

### *Education of policymakers*

The bill clarifies section 142(a) of the Act by specifying that P&A systems have the authority to educate policymakers. The Committee intends to provide to the P&A system the same authority currently in part B and part E of the Act and encourage the P&A system to assure that policymakers on the local, State, and Federal levels are aware of the activities of the P&A system and the needs of individuals with developmental disabilities.

### *Assurances*

Current law requires that the State provide assurances that the Federal funds provided to operate the P&A system will supplement and not supplant non-Federal funds. The bill amends this requirement by specifying that the P&A system, not the State, will provide such assurances.

### *Redesignation procedures*

The bill amends section 142(a) of the Act to clarify the process by which the Governor may redesignate the agency implementing the P&A system. The amendment requires that "(A) notice has been given of the intention to make such redesignation to the agency that is serving as the system including the good cause for such redesignation and the agency has been given an opportunity to respond to the assertion that good cause has been shown, (B) timely notice and opportunity for public comment in an accessible format has been given to individuals with developmental disabilities or their representatives, and (C) the system has the opportunity to appeal to the Secretary that the redesignation was not for good cause."

This provision was included in the 1990 Amendments to this Act, but could not be executed for technical reasons.

### ALLOTMENTS

Section 302 of the bill amends section 142(b) of the Act with respect to allotments. The bill provides that allotments to P&A systems will be held harmless at the higher of 1992 or 1993 levels, whichever is higher, with a ratable reduction if funds are not adequate. As in part B, there is some concern that certain P&A systems have experienced decreases in their allotments, even when the overall appropriation increased. This hold harmless provision is intended to protect P&A systems from significant reductions in allotments. In addition, the review of the allotment formula required under section 213 of this bill applies to P&A systems as well as State Developmental Disabilities Councils.

The bill specifies that, in any year that the allotment exceeds \$24,500,000, up to 2 percent of the allotment under this part shall be used for technical assistance to eligible P&A systems. In such

case, the technical assistance to P&A systems authorized under part E will not be provided. The Committee recognizes the value of training and technical assistance which has been provided to P&A systems through Projects of National Significance. However, the Committee believes that the increased demands on P&A systems require additional training and technical assistance funds similar to the PAIMI (Protection and Advocacy for Individuals with Mental Illness) and PAIR (Protection and Advocacy of Individual Rights) programs. Therefore, the Act provides for up to 2 percent of the appropriations to be used for training and technical assistance. The Committee intends that these funds should be used to provide skill building and sound management training as identified by the P&A systems and that the training and technical assistance be provided through an entity which has demonstrated experience in providing such services.

The bill also provides that when the allotment exceeds \$24,500,000, the Secretary shall provide funding to American Indian Consortia to provide protection and advocacy services. The Committee recognizes the difficulties that have prohibited the P&A systems to adequately serve large populations of American Indians who reside in isolated, expansive reservations. Despite their efforts, P&A systems in those States have not been able to overcome linguistic, geographic and cultural barriers in order to provide adequate protection and advocacy services to those populations. The American Indian Consortium will help alleviate this problem by allowing certain tribes to join together and apply to the Secretary for a Consortium allotment similar to the territories when the appropriation reaches \$24,500,000. It is the Committee's intent that the Consortium, when established, will work cooperatively with the existing P&A systems in the States where the Consortium exists and develop cooperative agreements on how to best serve this population. The Secretary should reserve that portion of the allotment as is specified for such application. If no such application is received in a given fiscal year, the allotment would be reallocated to the existing P&A systems as provided in statute.

#### GOVERNING BOARD

Section 303 of the bill amends section 142(d) of the Act to require that P&A systems that are private non-profit entities with multimember governing boards, or public P&As with multimember governing boards include on their boards "individuals with developmental disabilities who are eligible for services, or have received or are receiving services, or parents, family members, guardians, advocates, or authorized representatives of such individuals." The bill also requires that P&A systems that are public systems and do not have a multimember governing board or advisory board to establish an advisory committee to advise the P&A system "on policies or priorities to be carried out in protecting and advocating the rights of individuals with developmental disabilities." Furthermore, the bill specifies that such advisory committees shall "consist of a majority of individuals with developmental disabilities who are eligible for services, or have received or are receiving services, or parents, family members, guardians, advocates, or authorized representatives of such individuals."



The Committee is aware that few P&A systems in public systems have multimember governing boards or advisory boards. As a result, there is a limited role for individuals with developmental disabilities and their representatives and others who have knowledge and experience related to the activities of the P&A system to provide input into the implementation of the P&A system. The Committee intends that P&A systems that are public systems establish an advisory council which is parallel to the Advisory Council required in the Protection and Advocacy for Individuals with Mental Illness Act in order to provide a voice for those individuals. The Committee intends for the Administration on Developmental Disabilities to develop guidelines for the operation of advisory councils including provisions which will adequately address any potential conflict of interest which may arise from current users of the P&A system services who may be members of the advisory council.

#### DISCLOSURE OF INFORMATION

Section 303 of the bill adds a new requirement to section 142 (142(j)) of the Act to protect the confidentiality of client records. The bill provides that for any audit, report or evaluation required under this Act, the Secretary shall not require the P&A system to "disclose the identity of, or any personally identifiable information related to, any individual requesting assistance under such program." This requirement is consistent with the Rehabilitation Act Amendments of 1992 which contains similar language pertaining to the confidentiality of client records during Federal reviews of P&A systems. The Committee does not intend to limit the monitoring responsibilities of the Administration on Developmental Disabilities to assure that P&A systems are in compliance with the Act.

#### PUBLIC NOTICE OF FEDERAL ON-SITE REVIEW

Section 303 of the bill adds a new provision to section 142 (142(k)) of the Act requiring the Secretary to provide advance public notice of Federal reviews and to solicit public comment on the P&A system and to include the findings of the public comment solicitation in the report of the review. The Committee intends to provide opportunities for individuals and groups within the State, particularly individuals with developmental disabilities and their representatives, and advocacy organizations to comment on the effectiveness of the P&A system in carrying out the requirements of this part.

#### OTHER COMMITTEE VIEWS ON SYSTEM REQUIREMENTS

The Committee heard testimony about the waste of scarce resources that are expended on litigating the issue of whether P&A systems have standing to bring suit. The Committee wishes to make it clear that we have reviewed this issue and have decided that no statutory fix is necessary because the current statute is clear that P&A systems have standing to pursue legal remedies to ensure the protection of and advocacy for the rights of individuals with developmental disabilities within the State. The Committee has reviewed and concurs with the holdings and rationale in *Gold-*

*stein v. Coughlin*, 83 F.R.D. 613 (1979) and *Rubenstein v. Benedictine Hospital*, 790 F. Supp. 396 (N.D. N.Y. 1992)

#### AUTHORIZATION OF APPROPRIATIONS

Section 304 of the bill amends section 143 of the Act by authorizing to be appropriated \$29,000,000 for fiscal year 1994 and such sums for fiscal years 1995 and 1996.

### TITLE IV—UNIVERSITY AFFILIATED PROGRAMS

#### PART D—UNIVERSITY AFFILIATED PROGRAMS

##### PURPOSE AND SCOPE

Section 402 of the bill amends section 151 of the Act to read:

The purpose of this part is to provide for grants to university affiliated programs that are interdisciplinary programs operated by universities or by public or non-profit entities associated with a college or university, to provide a leadership role in the promotion of independence, productivity, and integration and inclusion into the community of individuals with developmental disabilities through the provision of the following activities:

(1) Interdisciplinary preservice preparation of students and fellows, including the preparation of leadership personnel.

(2) Community service activities that shall include community training and technical assistance for or with individuals with developmental disabilities, family members of individuals with developmental disabilities, professionals, paraprofessionals, students, and volunteers. Such activities may include state-of-the-art direct services including family support, individual support, personal assistance services, educational, vocational, clinical, health, prevention, or other direct services.

(3) Dissemination of information and research findings, which may include the empirical validation of activities relevant to the purposes described in paragraphs (1) and (2) and contributions to the development of new knowledge in the field of developmental disabilities.

The Committee notes that this revised description of the purpose and scope of university affiliated programs (UAPs) incorporates updated concepts about these university-based programs. The description of UAPs recognizes the fact that UAPs are located in, or affiliated with universities and, as such, provide an important foundation for higher education's response to the needs of individuals with developmental disabilities and their families. UAPs contribute to and reflect the overall mission of their host universities, and seek to ensure that the activities, resources, and expertise of the university are responsive to individuals with developmental disabilities and their families, advocacy organizations, and service systems and providers.

The revised description of UAPs reaffirms the interdisciplinary nature of these programs and their unique role within universities. UAPs do not duplicate the role of individual academic departments within a university, but rather provide a structure for faculty and students from various disciplines and perspectives to collaborate on program activities related to developmental disabilities.

This interdisciplinary perspective is especially critical in the preparation of personnel to provide services, supports and other assistance to individuals with developmental disabilities. UAPs provide academic training to students and fellows from various disciplines who, in many cases, have already acquired knowledge and competence in their own discipline. The UAP curriculum focuses on cross-disciplinary issues and current concepts within the field of developmental disabilities, such as partnerships with individuals with developmental disabilities and families, transition issues at all stages of life, interdisciplinary and interagency collaboration, service coordination, and disability policy issues.

In addition to the provision of interdisciplinary training, UAPs collaborate with academic departments to ensure that departmental curricula address issues related to developmental disabilities. The Committee notes that as the Americans with Disabilities Act is fully implemented and more individuals with developmental and other disabilities are full included in society, it is important that students from most (if not all) disciplines understand disability issues. UAPs are uniquely positioned within universities to help educate future generic service providers and others such as architects, business leaders, and lawyers to ensure that they promote the independence, productivity, and integration and inclusion of individuals with disabilities and families.

The Committee recognizes that the community training and technical assistance activities of UAPs have had a great impact on the capacity of State and local services delivery systems and communities to provide services, supports and other assistance to individuals with developmental disabilities and their families. For many UAPs, it is these activities that most directly contribute to changing systems. The Committee notes that the term "community training" includes outreach training and inservice training activities.

The bill reflects a major shift and update in the description of UAPs by making the provision of direct services optional. The Committee recognizes that many UAPs, particularly those located in medical schools, provide state-of-the-art direct services as an integral part of their program and as a basis for training, and that the community depends on these services. However, many UAPs do not provide direct services themselves but may collaborate with other university or community service programs for purposes of personnel preparation, community training, technical assistance, service demonstration, and/or dissemination and research. The Committee feels that UAPs should have flexibility on this issue, since both types of UAPs (those that provide direct services and those that do not) have demonstrated leadership in promoting the independence, productivity, and integration and inclusion of individuals with developmental disabilities and their families. The provision of direct services is not necessarily a critical component of every UAP.

The bill clarifies the scope of dissemination activities of UAPs. The Committee understands that UAPs disseminate a wide variety of products and information to many audiences. The bill specifies that dissemination may include the empirical validation of training and community service activities and contributions to the development of new knowledge in the field of developmental disabilities. The Committee notes that UAPs are in a unique position to document the effectiveness of new approaches to providing services, supports and other assistance to individuals with developmental disabilities and their families.

The Committee recognizes that UAPs are multi-faceted programs and that they receive training, research, and service demonstration support from various Federal and State agencies. Funding under this part is intended to provide administrative and operational support for UAPs and assist in leveraging resources from other sources to conduct personnel preparation, community training and technical assistance, direct services, and dissemination/research activities related to the purpose of UAPs.

#### GRANT AUTHORITY

##### *Administration and operation*

Section 403 of the bill amends section 152 of the Act by providing for grant periods of up to 5 years for the administration and operation of UAPs.

##### *Training projects*

Section 402 of the bill amends section 152 of the Act by providing for grant periods of up to 5 years for training projects. The bill updates the descriptions of the training project areas, and adds a new training project area—training in the Americans with Disabilities Act (ADA). ADA training includes training to personnel who provide or will provide services to individuals with developmental disabilities and others. It is the intent of the Committee that training projects in this area not be limited to personnel who traditionally provide direct services to individuals with developmental disabilities.

##### *Criteria for training projects*

Section 402 of the bill amends section 152 of the Act by adding to the criteria for training projects the requirement that these projects, to the extent possible, address the unique needs of individuals with developmental disabilities from ethnic, cultural, and linguistic minority backgrounds.

##### *Supplemental awards*

Section 402 of the bill amends section 152 of the Act by expanding the authority for supplemental awards to include interdisciplinary training, community training, technical assistance, community services, and/or dissemination of information. The Committee notes that supplemental awards may be used to support UAPs to extend their activities to unserved areas or to meet unmet needs. An example of an existing project in this area is the Hawaii UAP



extending its activities to American Samoa, Guam and the Northern Mariana Islands.

### *Satellite centers*

Section 402 of the bill amends section 152 of the Act by repealing provisions related to satellite centers. As discussed earlier in this report, the concept of satellite centers was originally introduced in 1975 to extend the expertise of existing university affiliated programs to States and regions unserved by a university affiliated program by establishing a center. Satellite centers eventually became independent university affiliated programs. The Committee notes that significant progress has been made in reaching the goal of establishing a university affiliated program in every State, making new satellite centers unnecessary. The Committee intends that any existing satellite centers shall be designated as university affiliated programs.

## APPLICATIONS

### *Standards*

Section 404 of the bill amends section 153 of the Act by directing the Secretary to establish by regulation, standards for university affiliated programs, within 12 months of the enactment of this Act.

### *Consumer advisory committee*

Section 404 of the bill amends section 153 of the Act by specifying that representatives from Parent Training and Information Centers may be included in the membership of the Consumer Advisory Committee.

### *Federal share*

Section 404 of the bill amends section 153 of the Act by incorporating provisions related to the Federal share from part A of the current law.

### *Peer review*

Section 404 of the bill amends section 153 of the Act by requiring that members of peer review groups be qualified by experience and training. Current law specifies experience or training. The Committee intends that all non-Federal individuals who participate in peer reviews will receive training in part D of the Developmental Disabilities Assistance and Bill of Rights Act and that individuals who have experience with and understand UAPs be members of review groups.

The Committee feels that a quality enhancement system that includes peer reviews of proposals, UAP site visits, and technical assistance should be used to continue to ensure the quality of UAPs.

## GRANT AWARDS

### *Priority for grant awards*

Section 405 of the bill amends section 154 of the Act by specifying priorities for awarding funds under this part. The priorities are: (1) the provision of continued support for existing university affiliated programs that meet the requirements in section 153, (2)

establishing new UAPs in States that do not have UAPs (Wyoming and the Virgin Islands are not currently served by a university affiliated program), (3) establishing a training project in every eligible university affiliated program, (4) increasing the funding for training projects from \$90,000 to \$100,000, (5) increasing the funding for administration and operation grants from \$200,000 to \$250,000, and (6) the provision of additional training in underserved areas through additional funding to an existing university affiliated program or through a new university affiliated program.

### *Single application*

Section 405 of the bill includes a new provision to section 154 of the Act that allows the Secretary to accept applications under 152(a) (administration and operation) and 152(b) (training projects) in the same application when every State has a university affiliated program and every university affiliated program has a training project.

### DEFINITION OF STATE

Section 406 of the bill adds a new section 155 to the Act. This section specifies that for the purposes of this part, the term State is defined as the States of the United States, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

### AUTHORIZATION OF APPROPRIATIONS

Section 406 of the bill adds a new section 156 to the Act. The bill authorizes to be appropriated under this part \$21,000,000 for fiscal year 1994 and such sums for 1995 and 1996. Current law authorizes two line items, one for administration and operation grants and one for training projects. The bill combines these two authorizations into one.

The bill also authorizes the Secretary to use not more than \$300,000 for peer review and related activities. However, the Committee encourages the Secretary to use Departmental general operation funds to support these activities to the greatest extent possible and to use funds appropriated under this section for programmatic activities.

## TITLE V—PROJECTS OF NATIONAL SIGNIFICANCE

### PART E—PROJECTS OF NATIONAL SIGNIFICANCE

#### PURPOSE

Section 502 of the bill amends section 161 of the Act by expanding the purpose of this part to provide for grants and contracts to support special pilot projects to explore the expansion of part B programs (State Developmental Disabilities Councils) to individuals with severe disabilities other than developmental disabilities.

#### GRANT AUTHORITY

### *Data collection*

Section 503 of the bill amends section 162 of the Act by directing the Secretary to fund projects to support on-going data collection

on expenditures, residential services and employment and to develop an ongoing data collection system, including data on the accomplishments of State Developmental Disabilities Councils, protection and advocacy systems, and university affiliated programs.

The Committee recognizes that ongoing data collection is essential for evaluating current policy and shaping future policy on behalf of individuals with developmental disabilities. The Committee notes that the current data sets on expenditures, residential services and employment have been very valuable to the developmental disabilities field. The Committee expects the Secretary will ensure that future data collection include individuals with developmental disabilities attributable to mental impairment, physical impairment or a combination of mental or physical impairments.

The Committee understands that currently grants for data collection projects are awarded for two year periods. The Committee requests that the Secretary will give thoughtful consideration to extending the grant period for the data collection grants to more than two years, if appropriate.

The Committee notes that there appears to be limited aggregate data on the programs authorized under this Act. The Committee encourages the Secretary to systematically collect, on an annual basis, data on State Developmental Disabilities Councils, protection and advocacy systems and university affiliated programs, and include an analysis of such data in the annual report required of the Secretary under part A.

#### *Technical assistance*

Section 503 of the bill amends section 162 of the Act by directing the Secretary to fund projects to provide technical assistance that expands or improves the effectiveness of State Developmental Disabilities Councils, protection and advocacy systems, and university affiliated programs.

#### *Other projects*

Section 503 of the bill amends section 162 of the Act by specifying other areas for projects of national significance that the Secretary may support through grants and contracts. These areas are as follows.

#### *Information and referral*

Projects may be funded to assist States to implement Statewide information and referral and service coordination systems. The Committee notes that the 1990 Report clearly documented the need for accessible information and referral and the need for statewide comprehensive systems of service coordination. Information and referral systems and service coordination systems are, by and large, operated and funded at the State level. Projects in this area should identify successful models throughout the country and assist States in adopting successful practices.

#### *Educate policymakers*

Projects may be funded to educate policymakers. This provision is in current law. The bill adds a provision that this may include the training of self-advocates and family members.

### *Interagency initiatives*

Current law provides for the support of projects to pursue inter-agency initiatives. The bill adds the provision that these initiatives must enhance the ability of Federal agencies to address the needs of individuals with developmental disabilities and their families.

### *Unserved and underserved*

The bill provides for the expansion of initiatives to improve opportunities for individuals who are unserved or underserved, including individuals from ethnic and racial minority groups, to participate in programs authorized under this Act, including an increase in the involvement of students and professionals from such groups in the provision of services, supports and advocacy.

### *Special initiatives*

Section 503 of the bill amends section 162 of the Act by directing the Secretary to support grants to conduct an investigation on the expansion of part B programs (Developmental Disabilities Councils) to individuals with severe disabilities other than developmental disabilities. This initiative is to be implemented through: (1) a study of the Councils that are currently mandated to focus on individuals with disabilities other than developmental disabilities (to be completed by June 30, 1995), (2) a study by Councils in up to 5 additional States to study the implications of expanding the definitions (to be completed by January 1996), and (3) a national study of the process and outcomes of the studies by Councils under (2) above.

The Committee notes that individuals with severe disabilities other than developmental disabilities (i.e., disabilities that are manifested after age 21) could benefit significantly from the systemic change, capacity building and advocacy activities authorized under this Act. Due to the complexity of this issue and the limited information available regarding the implications of such expansion, the Committee adopts the approach described in the bill. The Committee understands that at least six Councils currently have, or are authorized by the State to have, such an expanded focus.

### *List of project recipients*

Finally, section 503 of the bill amends section 162 of the Act by directing the Secretary to publish, on an annual basis, the recipients, project descriptions and funding levels for all projects funded under this part. The bill adds the requirement that the amounts for such grants and contracts shall total the amount appropriated under this part for such fiscal year.

## AUTHORIZATIONS OF APPROPRIATIONS

Section 504 of the bill amends section 163 of the Act by authorizing to be appropriated \$4,000,000 for fiscal year 1994 and such sums for fiscal year 1995 and 1996.

The bill specifies that the provision to fund special initiatives on the expansion of part B activities to individuals with disabilities other than developmental disabilities shall not be construed as re-



quiring the Secretary to supplant funding for other priorities described in this part.

The bill specifies that funding to carry out the special initiatives shall be provided no later than May 1 of the fiscal year in which such funds become available. The bill states that the Secretary may not use funds made available under this part for program reviews required by regulation or other administrative activities. Finally, the bill includes the provision that if technical assistance to protection and advocacy systems is funded under part C, then no funding for such activity will be provided under part E.

## V. REGULATORY IMPACT

The Committee has determined that there will be minimum increases in the regulatory burden imposed by this bill.

## VI. COST ESTIMATE

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC, July 30, 1993.

Hon. EDWARD M. KENNEDY,  
*Chairman, Committee on Labor and Human Resources,*  
*United States Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1284, the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1993, as ordered reported by the Senate Committee on Labor and Human Resources on July 30, 1993.

The bill would not affect direct spending or receipts and thus would not be subject to pay-as-you-go procedures under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1284.
2. Bill title: The Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1993.
3. Bill status: As ordered reported by the Senate Committee on Labor and Human Resources on July 30, 1993.
4. Bill purpose: To amend the Developmental Disabilities Assistance and Bill of Rights Act to expand or modify certain provisions relating to programs for individuals with developmental disabilities, protection and advocacy of individual rights, university affiliated programs, and projects of national significance, and for other purposes.
5. Estimated cost to the Federal Government:

(By fiscal year, in millions of dollars)

	1994	1995	1996	1997	1998
Federal assistance for priority area activities:					
Authorization of appropriations .....	77	79	81	.....	.....

(By fiscal year, in millions of dollars)

	1994	1995	1996	1997	1998
Estimated outlays .....	50	76	81	28	2
Protection and advocacy:					
Authorization of appropriations .....	29	30	30	.....	.....
Estimated outlays .....	19	29	30	11	1
University affiliated programs:					
Authorization of appropriations .....	21	22	22	.....	.....
Estimated outlays .....	3	20	22	19	1
Projects of national significance:					
Authorization of appropriations .....	4	4	4	.....	.....
Estimated outlays .....	1	4	4	4	0
Bill totals:					
Total Authorizations .....	131	135	138	.....	.....
Total estimated outlays .....	73	129	136	61	4

Note: Numbers may not add to totals due to rounding.

The costs of this bill fall within budget function 500.

Basis of estimate: This bill reauthorizes for three years the Developmental Disabilities Assistance and Bill of Rights Act.

S. 1284 authorizes appropriations of specific amounts for fiscal year 1994 and such sums as may be necessary for fiscal year 1995 and 1996. Authorizations of such sums as may be necessary have been estimated by increasing the amount specified for 1994 to reflect projected inflation. All outlay estimates assume appropriation of the full authorized amount at the beginning of each fiscal year. Estimated outlays reflect spending patterns of the current programs.

6. Pay-as-you-go considerations: The Budget Enforcement Act of 1990 sets up procedures for legislation affecting direct spending or receipts through 1995. CBO estimates that enactment of S. 1284 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to this bill.

7. Estimated cost to state and local governments: The bill would require state and local governments to pay 25 percent of the cost of priority area activities and university affiliated programs. Assuming full appropriation of the authorized amounts, the estimated state and local government outlays for matching funds would be \$18 million in fiscal year 1994, \$32 million in fiscal year 1995, \$34 million in fiscal year 1996, \$16 million in fiscal year 1997, and \$1 million in fiscal year 1998. These costs, will be incurred only if state and local governments accept the grants.

8. Estimate comparison: None.

9. Previous CBO estimate: None.

10. Estimate prepared by: Cory Oltman.

11. Estimate approved by: Paul Van de Water, for C.G. Nuckols, Assistant Director for Budget Analysis.

## VII. SECTION-BY-SECTION ANALYSIS

Section 1. This section provides that the short title of the bill is the "Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1993" and amends the Table of Contents.

Section 2. This section provides that "except as otherwise provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or

other provision of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6000 et seq.)."

## TITLE I—GENERAL PROVISIONS

Section 101. This section amends the headings for Title I and Part A.

Section 102. This section amends section 101 of the Act to provide for findings, purpose and policy for the Act.

Section 103. This section amends definitions included in section 102 of the Act and makes other technical and conforming amendments.

Section 104. This section repeals section 103 of the Act.

Section 105. This section amends section 104 of the Act to make technical and conforming changes.

Section 106. This section repeals section 105 of the Act.

Section 107. This section amends section 106 of the Act to make technical and conforming changes.

Section 108. This section amends section 107 of the Act to make technical and conforming changes, and to amend the reporting requirements for State Developmental Disabilities Councils, protection and advocacy systems, and the Secretary.

Section 109. This section amends section 108 of the Act to make technical and conforming changes.

Section 110. This section amends section 109 of the Act to make technical and conforming changes.

## TITLE II—FEDERAL ASSISTANCE FOR PRIORITY AREA ACTIVITIES FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

Section 201. This section amends the heading of Part B of the Act.

Section 202. This section amends section 121 of the Act to revise the purpose of Part B.

Section 203. This section amends section 122 of the Act regarding the State Plan.

Section 204. This section repeals section 123 of the Act.

Section 205. This section amends section 124 of the Act regarding the State Developmental Disabilities Council.

Section 206. This section amends section 125 regarding State allotments.

Section 207. This section amends part B of the Act by inserting a new section 125A regarding Federal and non-Federal share.

Section 208. This section amends section 126 of the Act to make technical and conforming changes.

Section 209. This section amends section 127 of the Act to make technical and conforming changes.

Section 210. This section repeals section 128 of the Act.

Section 211. This section amends section 130 of the Act to make technical and conforming changes.

Section 212. This section amends section 130 of the Act to make technical and conforming changes regarding the authorization of appropriation.

Section 213. This is a new section that provides for a review and analysis and a report regarding State allotment formulas used under parts B and C.

### TITLE III—PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

Section 301. This section amends the heading of part C in the Act.

Section 302. This section amends section 141 of the Act to make technical and conforming changes.

Section 303. This section amends section 142 of the Act regarding the requirements of protection and advocacy systems.

Section 304. This section amends section 143 of the Act by authorizing to be appropriated for part C for fiscal year 1994, \$29,000,000, and such sums for fiscal years 1995 and 1996.

### TITLE IV—UNIVERSITY AFFILIATED PROGRAMS

Section 401. This section amends the heading of part D of the Act.

Section 402. This section amends section 151 of the Act to provide for a revised section on purpose and scope of activities of a university affiliated program.

Section 403. This section amends section 152 of the Act regarding administration and operation grants, training projects, and supplementary training.

Section 404. This section amends section 153 of the Act regarding standards, consumer advisory committee, Federal share, and peer reviews.

Section 405. This section amends section 154 of the Act to specify priorities for grant awards.

Section 406. This section amends part D by adding two new sections to the Act. Section 155 of the Act defines "State" for the purposes of this part. Section 156 of the Act authorizes to be appropriated \$21,000,000 for fiscal year 1994, and such sums for fiscal years 1995 and 1996.

### TITLE V—PROJECTS OF NATIONAL SIGNIFICANCE

Section 501. This section amends the heading of part E of the Act.

Section 502. This section amends section 161 of the Act to expand the purpose of this part.

Section 503. This section amends section 162 of the Act regarding the grant authority. This section authorizes a study of the implications of expansion of the activities of part B to individuals with disabilities other than developmental disabilities.

Section 504. This section authorizes to be appropriated \$4,000,000 for fiscal year 1994, and such sums for fiscal years 1995 and 1996.

### VIII. CHANGES IN EXISTING LAW

In compliance with rule XXVI paragraph 12 of the Standing Rules of the Senate, the following provides a print of the statute



or the part or section thereof to be amended or replaced (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

## **DEVELOPMENTAL DISABILITIES ASSISTANCE AND BILL OF RIGHTS ACT**

### **[TITLE I—PROGRAMS FOR PERSONS WITH DEVELOPMENTAL DISABILITIES]**

#### ***TITLE I—PROGRAMS FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES***

##### **PART A—GENERAL PROVISIONS**

###### **SHORT TITLE**

SEC. 100. This title may be cited as the ["Developmental Disabilities Assistance and Bill of Rights Act".] "*Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1993*".

###### **[FINDINGS AND PURPOSES]**

[SEC. 101. (a) The Congress finds that—

[(1) in 1990 there are more than three million persons with developmental disabilities in the United States;

[(2) persons whose disabilities occur during their developmental period frequently have severe disabilities which are likely to continue indefinitely;

[(3) notwithstanding their severe disabilities, these persons have capabilities, competencies, and personal needs and preferences;

[(4) family and members of the community can play a central role in enhancing the lives of persons with developmental disabilities, especially when the family is provided with necessary support services;

[(5) persons with developmental disabilities and their families often require specialized lifelong assistance to be provided in a coordinated manner by many agencies and others in order to eliminate barriers for such persons and to meet the needs of such persons;

[(6) generic service agencies and agencies providing specialized services to persons with disabilities sometimes overlook, inappropriately address the needs of, or exclude persons with developmental disabilities in their planning and delivery of services;

[(7) a substantial portion of persons with developmental disabilities remain unserved or underserved;

[(8) public and private employers tend to be unaware of the capability of persons with developmental disabilities to be engaged in competitive work in integrated settings; and

[(9) it is in the national interest to offer persons with developmental disabilities the opportunity, to the maximum extent feasible, to make decisions for themselves and to live in typical

homes and communities where they can exercise their full rights and responsibilities as citizens.

[(b) The purposes of this title are—

[(1) to provide assistance to States and public and private nonprofit agencies and organizations to assure that all persons with developmental disabilities receive the services and other assistance and opportunities necessary to enable such persons to achieve their maximum potential through increased independence, productivity, and integration into the community;

[(2) to enhance the role of the family in assisting persons with developmental disabilities to achieve their maximum potential;

[(3) to provide interdisciplinary training and technical assistance to professionals, paraprofessionals, family members, and individuals with developmental disabilities;

[(4) to advocate for public policy change and community acceptance of all people with developmental disabilities and their families so that such persons receive the services, supports and other assistance and opportunities necessary to enable such persons to achieve their maximum potential through increased independence, productivity and integration into the community;

[(5) to promote the inclusion of all persons with developmental disabilities, including persons with the most severe disabilities, in community life;

[(6) to promote the interdependent activity of all persons with developmental disabilities, including persons with the most severe disabilities;

[(7) to recognize the contribution of all persons with developmental disabilities as such persons share their talents at home, school, and work, and in recreation and leisure time; and

[(8) to make grants to support a system in each State to protect the legal and human rights of persons with developmental disabilities.]

#### **SEC. 101. FINDINGS, PURPOSES, AND POLICY.**

(a) **FINDINGS.**—*The Congress finds that—*

(1) *in 1993 there are more than 3,000,000 individuals with developmental disabilities in the United States;*

(2) *disability is a natural part of the human experience and in no way diminishes the right of individuals with developmental disabilities to live independently, enjoy self-determination, make choices, contribute to society, and experience full integration and inclusion in the economic, political, social, cultural, and educational mainstream of American society;*

(3) *individuals with developmental disabilities continually encounter various forms of discrimination in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and public services;*

(4) *there is a lack of public awareness of the capabilities and competencies of individuals with developmental disabilities;*

(5) individuals whose disabilities occur during their developmental period frequently have severe disabilities that are likely to continue indefinitely;

(6) individuals with developmental disabilities and their families often require specialized lifelong assistance, provided in a coordinated and culturally competent manner by many agencies, professionals, advocates, community representatives, and others to eliminate barriers and to meet the needs of such individuals and their families;

(7) a substantial portion of individuals with developmental disabilities and their families do not have access to appropriate support and services from generic and specialized service systems and remain unserved or underserved;

(8) family members, friends, and members of the community can play a central role in enhancing the lives of individuals with developmental disabilities, especially when the family and community are provided with the necessary services and supports; and

(9) the goals of the Nation properly include the goal of providing individuals with developmental disabilities with the opportunities and support to—

(A) make informed choices and decisions;

(B) live in homes and communities in which such individuals can exercise their full rights and responsibilities as citizens;

(C) pursue meaningful and productive lives;

(D) contribute to their family, community, State, and Nation;

(E) have interdependent friendships and relationships with others; and

(F) achieve full integration and inclusion in society.

(b) **PURPOSE.**—The purpose of this Act is to assure that individuals with developmental disabilities and their families have access to culturally competent services, supports, and other assistance and opportunities that promote independence, productivity, and integration and inclusion into the community, through—

(1) support to State Developmental Disabilities Councils in each State to promote, through systemic change, capacity building, and advocacy, a consumer and family-centered, comprehensive system, and a coordinated array of services, supports, and other assistance for individuals with developmental disabilities and their families;

(2) support to protection and advocacy systems in each State to protect the legal and human rights of individuals with developmental disabilities;

(3) support to university affiliated programs to provide interdisciplinary preservice preparation of students and fellows, community service activities, and the dissemination of information and research findings; and

(4) support to national initiatives to collect necessary data, provide technical assistance to State Developmental Disabilities Councils, protection, and advocacy systems and university affiliated programs, and support other nationally significant activities.

(c) *POLICY.*—It is the policy of the United States that all programs, projects, and activities receiving assistance under this Act shall be carried out in a manner consistent with the principles that—

(1) *individuals with developmental disabilities, including those with the most severe developmental disabilities, are capable of achieving independence, productivity, and integration and inclusion into the community, and the provision of services, supports and other assistance can improve such individuals' ability to achieve independence, productivity, and integration and inclusion;*

(2) *individuals with developmental disabilities and their families are the primary decisionmakers regarding the services and supports such individuals and their families receive and play decisionmaking roles in policies and programs that affect the lives of such individuals and their families;*

(3) *individuals with developmental disabilities and their families have competencies, capabilities and personal goals that should be recognized, supported, and encouraged;*

(4) *services, supports, and other assistance are provided in a manner that demonstrates respect for individual dignity, personal preferences, and cultural differences;*

(5) *communities accept and support individuals with developmental disabilities and are enriched by the full and active participation and the contributions by individuals with developmental disabilities and their families; and*

(6) *individuals with developmental disabilities have opportunities and the necessary support to be included in community life, have interdependent relationships, live in homes and communities, and make contributions to their families, community, State, and Nation.*

#### [DEFINITIONS

[SEC. 102. For purposes of this title:

[(1) The term "State" includes Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the District of Columbia.

[(2) The term "nonprofit" means an agency, institution, or organization that is owned or operated by one or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private share holder or individual.

[(3) The term "construction" includes construction of new buildings, acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings (including medical, transportation, and recreation facilities); including architect's fees, but excluding the cost of offsite improvements and the cost of the acquisition of land.

[(4) The term "title", when used with reference to a site for a project, means a fee simple, or such other estate or interest (including a leasehold on which the rental does not exceed 4 per centum of the value of the land) as the Secretary finds sufficient to assure for a period of not less than fifty years undis-



turbed use and possession for the purposes of construction and operation of the project.

[(5) The term "developmental disability" means a severe, chronic disability of a person 5 years of age or older which—

[(A) is attributable to a mental or physical impairment or combination of mental and physical impairments;

[(B) is manifested before the person attains age twenty-two;

[(C) is likely to continue indefinitely;

[(D) results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and

[(E) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated; except that such term, when applied to infants and young children means individuals from birth to age 5, inclusive, who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.

[(6) The term "independence" means the extent to which persons with developmental disabilities exert control and choice over their own lives.

[(7) The term "productivity" means—

[(A) engagement in income-producing work by a person with developmental disabilities which is measured through improvements in income level, employment status, or job advancement, or

[(B) engagement by a person with developmental disabilities in work which contributes to a household or community.

[(8) The term "integration" means—

[(A) the—

[(i) use by persons with developmental disabilities of the same community resources that are used by and available to other citizens.

[(ii) participation by persons with developmental disabilities in the same community activities and integrated employment in which citizens without disabilities participate.

[(iii) use of the same community resources by persons with developmental disabilities living, learning, working, and enjoying life in regular contact with citizens without disabilities, and

[(iv) development of friendships and relationships with persons without disabilities, together with regular contact with citizens without disabilities, and

[(B) the residence by persons with developmental disabilities in homes which are in proximity to community re-

sources, together with regular contact with citizens without disabilities in their communities.

[(9) The term "priority area activities" includes, with respect to Federal priority areas or a State priority area—

[(A) activities to increase the capacities and resources of public and private nonprofit entities and others to develop a system for providing specialized services or special adaptations of generic services<sup>1</sup> or other assistance which responds to the needs and capabilities of persons with developmental disabilities and their families and to enhance coordination among entities;

[(B) the—

[(i) conduct of studies and analyses;

[(ii) gathering of information;

[(iii) development of model policies, and procedures; and

[(iv) presentation of information, approaches, strategies, findings, conclusions, and recommendations to Federal, State and local policymakers,

in order to enhance opportunities for persons with developmental disabilities, including the enhancement of a system for providing or making available specialized services or special adaptations of generic services for persons with developmental disabilities and the families of such persons;

[(C) the demonstration of new ways to enhance the independence, productivity, and integration into the community of persons with developmental disabilities, such as model demonstrations which, if successful, will be made generally applicable through sources of funding other than funding under this title, including new ways to enhance special adaptation of generic services or specialized services for persons with developmental disabilities and the families of such persons;

[(D) outreach activities for persons with developmental disabilities to enable such persons to obtain assistance in Federal priority areas or a State priority area, including access to special adaptation of generic services or specialized services for persons with developmental disabilities and the families of such persons;

[(E) the training of persons with developmental disabilities, family members of such persons, and personnel, including professionals, paraprofessionals, students, and volunteers, to obtain access to, or to provide, services and other assistance in the area, including special adaptation of generic services or specialized services for persons with developmental disabilities and the families of such persons; and

[(F) similar activities designed to prevent developmental disabilities from occurring or to expand and enhance the independence, productivity and integration into the community of persons with developmental disabilities through the State on a comprehensive basis.

[(10) The term "Federal priority areas" means community living activities, employment activities, child development ac-

tivities, and system coordination and community education activities.

[(11) The term "State priority area" means priority area activities in an area considered essential by the State Planning Council.

[(12) The term "community living activities" means such priority area activities as will assist persons with developmental disabilities in developing or maintaining suitable residential arrangements and supports in the community (including non-financial supports, individual, family and community supports).

[(13) The term "employment activities" means such priority area activities as will increase the independence, productivity, or integration of a person with developmental disabilities in work settings.

[(14) The term "supported employment" means competitive work in integrated work settings—

[(A) for persons with developmental disabilities for whom competitive employment has not traditionally occurred; or

[(B) for persons for whom competitive employment has been interrupted or intermittent as a result of a developmental disability, and who because of their disability need on-going support services to perform such work.

[(15) The term "child development activities" means such priority area activities as will assist in the prevention, identification, and alleviation of developmental disabilities in children, including early intervention services.

[(16) The term "case management activities" means priority area activities to establish a potentially life-long, goal-oriented process for coordinating the range of assistance needed by persons with developmental disabilities and their families, which is designed to ensure accessibility, continuity of supports and services, and accountability and to ensure that the maximum potential of persons with developmental disabilities for independence, productivity, and integration into the community is attained.

[(17) The term "satellite center" means a public or private nonprofit entity which—

[(A)(i) is affiliated with one or more university affiliated programs;

[(ii) functions as a community or regional extension of such university affiliated program or programs in the delivery of services to persons with developmental disabilities, and their families, who reside in geographical areas where adequate services are not otherwise available; and

[(iii) may engage in the activities described in subparagraph (A), (B), or (C) of paragraph (18); or

[(B) is affiliated with one or more university affiliated programs and which provides for at least—

[(i) interdisciplinary training for personnel concerned with the provision of direct or indirect services to persons with developmental disabilities and their families; and

[(ii) dissemination of findings relating to the provision of services to persons with developmental disabilities and their families.

[(18) The term "university affiliated program" means a program operated by a public or nonprofit private entity which is associated with, or is an integral part of, a college or university and which provides for at least the following activities:

[(A) Interdisciplinary training for personnel concerned with developmental disabilities, including parents of persons with developmental disabilities, professionals, paraprofessionals, students, and volunteers, which is conducted at a facility and through outreach activities.

[(B) Demonstration of—

[(i) exemplary services relating to persons with developmental disabilities in settings which are integrated in the community; and

[(ii) technical assistance to generic and specialized agencies to provide services to increase the independence, productivity, and integration into the community of persons with developmental disabilities, such as the development and improvement of quality assurance mechanisms.

[(C)(i) Dissemination of findings relating to the provision of services under subparagraph (B) of this paragraph, and (ii) providing researchers and government agencies sponsoring service-related research with information on the needs for further service-related research which would provide data and information that will assist in increasing the independence, productivity, and integration into the community of persons with developmental disabilities.

[(19) The term "Secretary" means the Secretary of Health and Human Services.

[(20) The term "State Planning Council" means a State Planning Council established under section 124.

[(21) The term "protection and advocacy system" means a protection and advocacy system established in accordance with section 142.

[(22) The term "assistive technology" means the systematic application of technology, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, persons with developmental disabilities in areas including education, employment, supported employment, transportation, and independent living and other community living arrangements. Such term includes assistive technology devices and assistive technology service.

[(23) The term "early intervention services" means services provided to infants, toddlers, young children, and the families of such to—

[(A) identify, assess, and treat developmental disabilities at the earliest possible time to prevent more serious disability;

[(B) ensure the maximum growth and development of a person within the above classes who has a developmental disability; and



[(C) assist families in raising a child with a developmental disability.

[(24) The term "family support service" means services, supports, and other assistance provided to families with members with developmental disabilities, that are designed to—

[(A) strengthen the family's role as primary caregiver.

[(B) prevent inappropriate out of the home placement and maintain family unity, and

[(C) reunite families with members who have been placed out of the home.

Such term includes respite care, assistive technology, personal assistance, parent training and counseling, support for elderly parents, vehicular and home modifications, and assistance with extraordinary expenses associated with the needs of the person with a developmental disability.

[(25) The term "individual supports" means services, supports, and other assistance that enable persons with developmental disabilities to be independent, productive, and integrated into their communities, and that are designed to—

[(A) enable the person to control his or her environment, permitting the most independent life possible.

[(B) prevent placement into a more restrictive living arrangement than is necessary, and

[(C) enable the person to live, learn, work, and enjoy life in the community.

Such term includes personal assistance services, assistive technology, vehicular and home modifications, support at work, and transportation.

[(26) The term "community supports" means providing activities, services, supports, and other assistance to persons with developmental disabilities, and the families and communities of such persons, that are designed to—

[(A) assist neighborhoods and communities to be more responsive to the needs of persons with developmental disabilities and their families,

[(B) develop local networks which can provide informal support, and

[(C) make communities accessible and enable communities to offer their resources and opportunities to persons with developmental disabilities and their families.

Such term includes community education, personal assistance services, vehicular and home modifications, support at work, and transportation.

[(27) The term "system coordination and community education activities" means activities that—

[(A) eliminate barriers to access and eligibility for services, supports, and other assistance.

[(B) enhance systems design and integration including the encouragement of the creation of local case management and information and referral statewide systems, and

[(C) enhance individual, family and citizen participation and involvement.

[(28) The term "assistive technology device" means any item, piece of equipment, or product system, whether acquired com-

mercially, modified or customized, that is used to increase, maintain, or improve functional capabilities of a person with a developmental disability.

[(29) The term "assistive technology service" means any service that directly assists a person with a developmental disability in the selection, acquisition, or use of an assistive technology device. Such term includes—

[(A) the evaluation of the needs of a person with a developmental disability, including a functional evaluation of the person in the person's customary environment;

[(B) purchasing, leasing or otherwise providing for the acquisition of assistive technology devices by a person with a developmental disability;

[(C) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing assistive technology devices;

[(D) coordinating and using other therapies, interventions or services associated with existing education and rehabilitation plans and programs;

[(E) training or technical assistance for a person with developmental disabilities, or, where appropriate, the family of a person with a developmental disability; and

[(F) training or technical assistance for professionals (including persons providing education and rehabilitation services), employers, or other persons who provide services to, employ, or are otherwise substantially involved in the major life functions of a person with developmental disability.

[(30) The term "prevention" means activities which address the causes of developmental disabilities and the exacerbation of functional limitations, such as activities which—

[(A) eliminate or reduce the factors which cause or predispose persons to developmental disabilities or which increase the prevalence of developmental disabilities;

[(B) increase the early identification of existing problems to eliminate circumstances that create or increase functional limitations; and

[(C) mitigate against the effects of developmental disabilities throughout the person's lifespan.]

## **SEC. 102. DEFINITIONS.**

*For purposes of this title:*

(1) **AMERICAN INDIAN CONSORTIUM.**—The term "American Indian Consortium" means any confederation of two or more recognized American Indian tribes, created through the official action of each participating tribe, that has a combined total resident population of 150,000 enrolled tribal members and a contiguous territory of Indian lands in two or more States.

(2) **ASSISTIVE TECHNOLOGY DEVICE.**—The term "assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, modified or customized, that is used to increase, maintain, or improve functional capabilities of individuals with developmental disabilities.

(3) **ASSISTIVE TECHNOLOGY SERVICE.**—The term "assistive technology service" means any service that directly assists an individual with a developmental disability in the selection, ac-

quisition, or use, of an assistive technology device. Such term includes—

(A) the evaluation of the needs of an individual with a developmental disability, including a functional evaluation of such individual in such individual's customary environment;

(B) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by an individual with a developmental disability;

(C) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing assistive technology devices;

(D) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(E) training or technical assistance for an individual with a developmental disability, or, where appropriate, the family of an individual with a developmental disability; and

(F) training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of, an individual with developmental disabilities.

(4) **CHILD DEVELOPMENT ACTIVITIES.**—The term “child development activities” means such priority area activities as will assist in the prevention, identification, and alleviation of developmental disabilities in children, including early intervention services.

(5) **COMMUNITY LIVING ACTIVITIES.**—The term “community living activities” means such priority area activities as will assist individuals with developmental disabilities to obtain and receive the supports needed to live in their family home or a home of their own with individuals of their choice and to develop supports in the community.

(6) **COMMUNITY SUPPORTS.**—The term “community supports” means activities, services, supports, and other assistance designed to—

(A) assist neighborhoods and communities to be more responsive to the needs of individuals with developmental disabilities and their families;

(B) develop local networks that can provide informal support; and

(C) make communities accessible and enable communities to offer their resources and opportunities to individuals with developmental disabilities and their families.

Such term includes community education, personal assistance services, vehicular and home modifications, support at work, and transportation.

(7) **DEVELOPMENTAL DISABILITY.**—The term “developmental disability” means a severe, chronic disability of an individual 5 years of age or older that—

(A) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(B) is manifested before the individual attains age 22;

(C) is likely to continue indefinitely;

(D) results in substantial functional limitations in three or more of the following areas of major life activity—

(i) self-care;

(ii) receptive and expressive language;

(iii) learning;

(iv) mobility;

(v) self-direction;

(vi) capacity for independent living; and

(vii) economic self-sufficiency; and

(E) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, supports, or other assistance that are of lifelong or extended duration and are individually planned and coordinated, except that such term, when applied to infants and young children means individuals from birth to age 5, inclusive, who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.

(8) **EARLY INTERVENTION SERVICES.**—The term “early intervention services” means services provided to infants, toddlers, young children, and their families to—

(A) enhance the development of infants, toddlers, and young children with disabilities and to minimize their potential for developmental delay; and

(B) enhance the capacity of families to meet the special needs of their infants, toddlers, and young children.

(9) **EMPLOYMENT ACTIVITIES.**—The term “employment activities” means such priority area activities as will increase the independence, productivity, and integration and inclusion into the community of individuals with developmental disabilities in work settings.

(10) **FAMILY SUPPORT SERVICE.**—The term “family support service” means services, supports, and other assistance provided to families with members with developmental disabilities, that are designed to—

(A) strengthen the family's role as primary caregiver;

(B) prevent inappropriate out-of-the-home placement and maintain family unity; and

(C) reunite families with members who have been placed out of the home.

Such term includes respite care, rehabilitation technology, personal assistance services, parent training and counseling, support for elderly parents, vehicular and home modifications, and assistance with extraordinary expenses associated with the needs of individuals with developmental disabilities.

(11) **FEDERAL PRIORITY AREAS.**—The term “Federal priority areas” means community living activities, employment activities, child development activities, and system coordination and community education activities.



(12) *INDEPENDENCE.*—The term “independence” means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(13) *INDIVIDUAL SUPPORTS.*—The term “individual supports” means services, supports, and other assistance that enable an individual with a developmental disability to be independent, productive, integrated, and included into such individual’s community, and that are designed to—

(A) enable such individual to control such individual’s environment, permitting the most independent life possible;

(B) prevent placement into a more restrictive living arrangement than is necessary; and

(C) enable such individual to live, learn, work, and enjoy life in the community.

Such term includes personal assistance services, rehabilitation technology, vehicular and home modifications, support at work, and transportation.

(14) *INTEGRATION AND INCLUSION.*—The term “integration and inclusion”, with respect to individuals with developmental disabilities, means—

(A) the use by individuals with developmental disabilities of the same community resources that are used by and available to other citizens;

(B) living in homes close to community resources, with regular contact with citizens without disabilities in their communities;

(C) the full and active participation by individuals with developmental disabilities in the same community activities and types of employment as citizens without disabilities, and utilization of the same community resources as citizens without disabilities, living, learning, working, and enjoying life in regular contact with citizens without disabilities; and

(D) having friendships and relationships with individuals and families of their own choosing.

(15) *NONPROFIT.*—The term “nonprofit” means an agency, institution, or organization that is owned or operated by one or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(16) *OTHER ORGANIZATIONS.*—The term “other organizations” means those organizations that are not State agencies or non-profit agencies, except such organizations may be consulting firms, independent proprietary businesses and providers, and local community groups not organizationally incorporated, and that are interested in supporting individuals with developmental disabilities.

(17) *PERSONAL ASSISTANCE SERVICES.*—The term “personal assistance services” means a range of services, provided by one or more individuals, designed to assist an individual with a disability to perform daily living activities on or off a job that such individual would typically perform if such individual did not have a disability. Such services shall be designed to in-

crease such individual's control in life and ability to perform everyday activities on or off such job.

(18) **PREVENTION.**—The term "prevention" means activities that address the causes of developmental disabilities and the exacerbation of functional limitations, such as activities that—

(A) eliminate or reduce the factors that cause or predispose individuals to developmental disabilities or that increase the prevalence of developmental disabilities;

(B) increase the early identification of existing problems to eliminate circumstances that create or increase functional limitations; and

(C) mitigate against the effects of developmental disabilities throughout the individual's lifespan.

(19) **PRODUCTIVITY.**—The term "productivity" means—

(A) engagement in income-producing work that is measured by increased income, improved employment status, or job advancement; or

(B) engagement in work that contributes to a household or community.

(20) **PROTECTION AND ADVOCACY SYSTEM.**—The term "protection and advocacy system" means a protection and advocacy system established in accordance with section 142.

(21) **REHABILITATION TECHNOLOGY.**—The term "rehabilitation technology" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with developmental disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. Such term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

(22) **SECRETARY.**—The term "Secretary" means the Secretary of Health and Human Services.

(23) **SERVICE COORDINATION ACTIVITIES.**—The term "service coordination activities" (also referred to as 'case management activities') means activities that assist and enable individuals with developmental disabilities and their families to access services, supports and other assistance, and includes—

(A) the provision of information to individuals with developmental disabilities and their families about the availability of services, supports, and other assistance;

(B) assistance in obtaining appropriate services, supports, and other assistance, which may include facilitating and organizing such assistance;

(C) coordination and monitoring of services, supports, and other assistance provided singly or in combination to individuals with developmental disabilities and their families to ensure accessibility, continuity, and accountability of such assistance; and

(D) follow-along services that ensure, through a continuing relationship, that the changing needs of individuals with developmental disabilities and their families are recognized and appropriately met.

(24) **STATE.**—The term "State" includes, in addition to each of the several States of the United States, the District of Colum-

*bia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau (until the Compact of Free Association with Palau takes effect).*

(25) *STATE DEVELOPMENTAL DISABILITIES COUNCIL.*—The term “State Developmental Disabilities Council” means a Council established under section 124.

(26) *STATE PRIORITY AREA.*—The term “State priority area” means priority area activities in an area considered essential by the State Developmental Disabilities Council.

(27) *SUPPORTED EMPLOYMENT.*—The term “supported employment” means competitive work in integrated work settings for individuals with developmental disabilities—

(A)(i) for whom competitive employment has not traditionally occurred; or

(ii) for whom competitive employment has been interrupted or intermittent as a result of a severe disability; and

(B) who, because of the nature and severity of their disability, need intensive supported employment services or extended services in order to perform such work.

(28) *SYSTEM COORDINATION AND COMMUNITY EDUCATION ACTIVITIES.*—The term “system coordination and community education activities” means activities that—

(A) eliminate barriers to access and eligibility for services, supports, and other assistance;

(B) enhance systems design, redesign, and integration, including the encouragement of the creation of local service coordination and information and referral statewide systems;

(C) enhance individual, family, and citizen participation and involvement; and

(D) develop and support coalitions and individuals through training in self-advocacy, educating policymakers, and citizen leadership skills.

(29) *SYSTEMIC ADVOCACY.*—The term “systemic advocacy” means activities that identify, support, and recommend improvements in the planning, design, redesign, structure, delivery, or funding of generic or specialized services and supports.

(30) *UNIVERSITY AFFILIATED PROGRAM.*—The term “university affiliated program” means a university affiliated program established under section 152.

#### [FEDERAL SHARE

[SEC. 103. (a) The Federal share of all projects in a State supported by an allotment to the State under part B may not exceed 75 percent of the aggregate necessary costs of all such projects, as determined by the Secretary, except that in the case of projects whose activities or products target people who live in urban or rural poverty areas, the Federal share of all such projects may not exceed 90 percent of the aggregate necessary costs of such projects, as determined by the Secretary.

[(b) The Federal share of any project to be provided through grants under part D may not exceed 75 percent of the necessary cost of such project, as determined by the Secretary, ex-

cept that if the project activities or products target people who live in an urban or rural poverty area, the Federal share may not exceed 90 percent of the project's necessary costs as so determined.

[(c) the non-Federal share of the cost of any project assisted by a grant or allotment under part B of this title may be provided in kind.

[(d) For the purpose of determining the Federal share with respect to any project, expenditures on that project by a political subdivision of a State or by a nonprofit private entity shall, subject to such limitations and conditions as the Secretary may by regulation prescribe, be deemed to be expenditures by such State in the case of a project under part B or by a university affiliated facility or a satellite center, as the case may be, in the case of a project assisted under part D.]

#### [RECORDS AND AUDIT]

#### [SEC. 104.]

##### **SEC. 104. RECORDS AND AUDITS.**

(a) [Each] *RECORDS*.—*Each* recipient of assistance under this title shall keep such records as the Secretary shall prescribe, [including] *including*—

(1) records which fully [disclose] *disclose*—

(A) the amount and disposition by such recipient of the proceeds of such assistance;

(B) the total cost of the project or undertaking in connection with which such assistance is given or used; and

(C) the amount of that portion of the cost of the project or undertaking supplied by other sources; and

(2) such other records as will facilitate an effective audit.

(b) [The Secretary] *ACCESS*.—*The Secretary* and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of assistance under this title that are pertinent to such assistance.

#### [RECOVERY]

[SEC. 105. If any facility with respect to which funds have been paid under part B or D shall, at any time within twenty years after the completion of construction—

[(1) be sold or transferred to any person, agency, or organization which is not a public or nonprofit private entity, or

[(2) cease to be a public or other nonprofit facility for persons with developmental disabilities,

the United States shall be entitled to recover from either the transferor or the transferee (or, in the case of a facility which has ceased to be a public or other nonprofit facility for persons with developmental disabilities, from the owners thereof) an amount bearing the same ratio to the then value (as determined by the agreement of the parties or by action brought in the district court of the United States for the District in which the facility is situated) of so much of such facility as constituted an approved project or projects,



as the amount of the Federal participation bore to the cost of the construction of such project or projects. Such right of recovery shall not constitute a lien upon such facility prior to judgment. The Secretary, in accordance with regulations prescribed by the Secretary, may, upon finding good cause therefor, release the applicant or other owner from the obligation to continue such facility as a public or other nonprofit facility for persons with developmental disabilities.]

#### [STATE CONTROL OF OPERATIONS

##### [SEC. 106.]

#### **SEC. 106. STATE CONTROL OF OPERATIONS.**

Except as otherwise specifically provided, nothing in this title shall be construed as conferring on any Federal officer or employee the right to exercise any supervision or control over the administration, personnel, maintenance, or operation of any [facility for persons] *programs, services, and supports for individuals* with developmental disabilities with respect to which any funds have been or may be expended under this title.

#### [REPORTS

##### [SEC. 107.]

#### **SEC. 107. REPORTS.**

(a) [By January] *DEVELOPMENTAL DISABILITIES COUNCIL REPORTS.*—*By January of each year, [the State Planning Council of each State] each State Developmental Disabilities Council shall prepare and transmit to the Secretary [a report concerning] a report of activities carried out during the preceding fiscal year with funds paid to the State under part B for such fiscal year. Each [such report] report shall be in a form prescribed by the Secretary by regulation and shall contain—*

(1) a description [of such activities and the accomplishments resulting from such activities] *of activities and accomplishments;*

(2) a comparison of [such accomplishments] *accomplishments* with the goals, objectives, and proposed activities specified [by the State] in the State plan submitted under section 122 for such fiscal year;

(3) an accounting of the manner in which funds paid to a State under part B for a fiscal year were expended;

(4) a description of the State [Planning] *Developmental Disabilities* Council's response to significant actions taken by the State with respect to any intermediate care facility for the mentally retarded in such State, with respect to any intermediate care facility for the mentally retarded in such State, and with respect to [each] annual survey [report] *reports* prepared pursuant to section [1902(a)(31)(C)] *1902(a)(31)* of the Social Security Act and [each] correction or reduction [plan] *plans* prepared pursuant to section 1922 of such Act[; and];

[(5) a description of the progress made in the State in, and any identifiable trends concerning, the setting of priorities for, policy reform concerning, advocacy for, and other actions on behalf of and with persons with developmental disabilities which

are attributable to physical impairment, mental impairment, or a combination of physical and mental impairments, particularly unserved and underserved groups, including any other subpopulation of persons with developmental disabilities (including minorities), and a summary of actions taken to improve access to and services for unserved and underserved groups that the State Planning Council may have identified.】

(5) *a description of—*

(A) *the trends and progress made in the State concerning systemic change (including policy reform), capacity building, advocacy, and other actions on behalf of individuals with developmental disabilities, with attention to individuals who are traditionally unserved and underserved, including individuals who are members of ethnic and racial minority groups, and individuals from underserved geographic areas;*

(B) *systemic change, capacity building, and advocacy activities that affect individuals with disabilities other than developmental disabilities; and*

(C) *a summary of actions taken to improve access and services for unserved and underserved groups;*

(6) *a description of resources leveraged by activities directly attributable to State Developmental Disabilities Council actions; and*

(7) *a description of the method by which the State Developmental Disabilities Council shall widely disseminate the annual report to affected constituencies as well as the general public and to assure that the report is available in accessible formats.*

(b) [By January] **PROTECTION AND ADVOCACY SYSTEM REPORTS.**—*By January 1 of each year, each protection and advocacy system established in a State pursuant to part C shall prepare and transmit to the Secretary a report which describes the activities, accomplishments, and expenditures of the system during the preceding fiscal year, including a description of the system's priorities for such fiscal year, the process used to obtain public input, the nature of such input, and how such input was used.*

[(c)](c) **Secretary Reports.**—

[(1) By](1) **IN GENERAL.**—*By July 1 of each year the Secretary shall prepare and transmit to the President, the Congress, and the National Council on Disability a report which describes—*

(A) *the activities and accomplishments of programs supported under parts B, C, D, and E of this title;*

(B) *the progress made in States in improving the independence, productivity, and [integration] integration and inclusion into the community of [persons] individuals with developmental disabilities and any activities or services needed to improve such independence, productivity, and [integration;] integration and inclusion;*

[(C)](C) *the progress made by States in, and any identifiable trends concerning, the setting of priorities for, policy reform concerning, advocacy for, and other actions on behalf of, persons with developmental disabilities attributable to*

physical impairment, mental impairment, or a combination of physical and mental impairments, particularly unserved or underserved groups, including any other subpopulation of persons with developmental disabilities including minorities) that the State Planning Council has identified under sections 122(b)(3) and 122(f), and a summary of actions taken to improve access to services for such groups:]

(C)(i) *the trends and progress made in the States concerning systemic change (including policy reform), capacity building, advocacy, and other actions on behalf of individuals with developmental disabilities, with attention to individuals who are traditionally unserved and underserved, including individuals who are members of ethnic and racial minority groups, and individuals from underserved geographic areas;*

(ii) *systemic change, capacity building, and advocacy activities that affect individuals with disabilities other than developmental disabilities; and*

(iii) *a summary of actions taken to improve access and services for unserved and underserved groups;*

(D) the significant Federal policies that impact on the ability of States to address the needs of [persons] with developmental disabilities attributable to physical impairments, mental impairments, or a combination of mental and physical impairments; and

\* \* \* \* \*

(2) In preparing the report required by this subsection, the Secretary shall [use and include] *include and analyze* information submitted to the Secretary in the reports required under subsections (a) and (b) of this section.

#### [RESPONSIBILITIES OF THE SECRETARY

##### [SEC. 108.]

#### **SEC. 108. RESPONSIBILITIES OF THE SECRETARY.**

(a) [The Secretary.] *REGULATIONS.—THE SECRETARY*, not later than one hundred eighty days after the date of enactment of any Act amending the provisions of this title, shall promulgate such regulations as may be required for the implementation of such amendments.

(b) [Within ninety] Interagency Committee.—Within 90 days after the date of enactment of the Developmental Disabilities Act of 1984, the Secretary of Health and Human Services and the Secretary of Education shall establish an interagency committee composed of representatives of the [Administration for Developmental Disabilities] *Administration on Developmental Disabilities* the Administration on Children, Youth and Families, the Administration on Aging, and the Health Resources and Services Administration, of the Department of Health and Human Services, the Office of Special Education and Rehabilitative Services of the Department of Education, the Department of Labor, and such other Federal departments and agencies as the Secretary of Health and Human Services and the Secretary of Education consider appropriate. Such interagency committee shall meet regularly to coordinate and plan

activities conducted by Federal departments and agencies for persons with developmental disabilities. Each meeting of the inter-agency committee (except for any meetings of any subcommittees of the committee shall be open to the public. Notice of each meeting, and a statement of the agenda for the meeting, shall be published in the Federal Register not later than 14 days before the date on which the meeting is to occur.

#### [EMPLOYMENT OF HANDICAPPED INDIVIDUALS

##### [SEC. 109.]

#### **SEC. 109. EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES.**

As a condition of providing assistance under this title, the Secretary shall require that each recipient of such assistance take affirmative action to employ and advance in employment qualified [handicapped individuals] *individuals with disabilities* on the same terms and conditions required with respect to the employment of such individuals by the provisions of the Rehabilitation [Act of] *Act of 1973* [which govern employment (1) by State rehabilitation agencies and rehabilitation facilities, and (2) under Federal contracts and subcontracts.] *that govern employment—*

- (1) by State rehabilitation agencies and community rehabilitation programs; and
- (2) under Federal contracts and subcontracts.

#### [RIGHTS OF THE DEVELOPMENTALLY DISABLED

##### [SEC. 110.]

#### **SEC. 110. RIGHTS OF INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES.**

Congress makes the following findings respecting the rights of [persons] *individuals* with developmental disabilities:

(1) [Persons] *Individuals* with developmental disabilities have a right to appropriate treatment, services, and habilitation for such disabilities.

(2) The treatment, services, and habilitation for [a person] *an individual* with developmental disabilities should be designed to maximize the developmental potential of [the person] *the individual* and should be provided in the setting that is least restrictive of [the person's] *the individual's* personal liberty.

(3) The Federal Government and the States both have an obligation to assure that public funds are not provided to any institutional or other residential program for [persons] *individuals* with developmental disabilities that—

\* \* \* \* \*

(4) All programs for [persons] *individuals* with developmental disabilities should meet standards which are designed to assure the most favorable possible outcome for those served, and—

\* \* \* \* \*

The rights of [persons] *individuals* with developmental disabilities described in findings made in this section are in addi-



tion to any constitutional or other rights otherwise afforded to all persons.

**[PART B—FEDERAL ASSISTANCE FOR PLANNING PRIORITY AREA ACTIVITIES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES]**

**PART B—FEDERAL ASSISTANCE TO STATE DEVELOPMENTAL DISABILITIES COUNCILS**

**[PURPOSE]**

[SEC. 121. The purpose of this part is to provide payments to States to assist in the development of a comprehensive system and a coordinated array of services and other assistance for persons with developmental disabilities and their families through the conduct of, and appropriate planning and coordination of, administrative activities, Federal priority activities, and a State priority activity, in order to support persons with developmental disabilities to achieve their maximum potential through increased independence, productivity, and integration into the community.]

**SEC. 121. PURPOSE.**

*The purpose of this part is to provide for allotments to support State Developmental Disabilities Councils in each State to promote, through systemic change, capacity building, and advocacy, the development of a consumer and family-centered, comprehensive system and a coordinated array of services, supports, and other assistance designed to achieve independence, productivity, and integration and inclusion into the community for individuals with developmental disabilities.*

**[STATE PLANS]**

[SEC. 122. (a) Any State desiring to take advantage of this part must have a State plan submitted to and approved by the Secretary under this section.

[(b) In order to be approved by the Secretary under this section, a State plan must meet the following requirements:

[(1)(A) The plan must provide for the establishment of a State Planning Council in accordance with section 124.

[(B) The plan must designate the State agency (hereafter in this part referred to as the "designated State agency") which, on behalf of the State, shall receive, account for, and disburse funds under this part based on the State plan required in section 122, and shall provide required assurances and other administrative support services. Except as provided in subsection (e), the designated State agency may be—

[(i) the State Planning Council required under subparagraph (A) if such Council may be the designated State agency under the laws of the State;

[(ii) a State agency that does not provide or pay for services made available to persons with developmental disabilities; or

[(iii) a State office, including the immediate office of the Governor of the State or a State planning office.

[(C) The plan must provide that the State agency designated under subparagraph (B) will keep such records and afford such access thereto as the Secretary or the State Planning Council finds necessary.

[(D) The plan must provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of an accounting for funds paid to the State under this part.

[(2) The plan must—

[(A) set out the specific objectives to be achieved under the plan and a listing of the programs, activities, and resources to be used to meet such objectives;

[(B) set forth the non-Federal share that will be required in carrying out each such objective and program;

[(C) describe (and provide for the review annually and revision of the description not less often than once every three years) (i) the extent and scope of services, supports and other assistance being provided, or to be provided, to persons with developmental disabilities under such other State plans or, or policies affecting, federally assisted State programs that the State conducts and in which persons with developmental disabilities are or may be eligible to participate, including programs relating to education, job training, vocational rehabilitation, public assistance, medical assistance, social services, child welfare, maternal and child health, aging, programs for children with special health care needs, housing, transportation, technology, comprehensive health and mental health, and such other programs as the Secretary may specify. (ii) the extent to which such federally assisted State programs develop and pursue interagency initiatives aimed at improving and enhancing services, supports and other assistance, which results in increased independence, productivity, and integration into the community for persons with developmental disabilities, and (iii) how funds allotted to the State in accordance with section 125 will be used to complement and augment rather than duplicate or replace services for persons with developmental disabilities and their families who are eligible for Federal assistance under such other State programs;

[(D) assess, and if appropriate, update the findings of the report conducted pursuant to subsection (f), and report on any progress achieved concerning issues identified in the report conducted pursuant to such subsection in the previous fiscal year;

[(E) for each fiscal year, assess and describe the extent and scope of the Federal and State priority areas which are addressed or which will be addressed under the plan in the fiscal year; and

[(F) establish a method for the periodic evaluation of the plan's effectiveness in meeting the objectives described in subparagraph (A).

[(3) The plan must describe a process and timetable for the completion, by January 1, 1990, by the State Planning Council

in the State, of the reviews, analyses, and final report described in subsection (f).

[(4) The plan must contain or be supported by assurances satisfactory to the Secretary that—

[(A) the funds paid to the State under section 125 will be used to make a significant contribution toward enhancing the independence, productivity, and integration into the community of persons with developmental disabilities through agencies in the various political subdivisions of the State;

[(B) part of such funds will be made available by the State to public or nonprofit private entities;

[(C) not more than 25 percent of such funds will be allocated to the agency designated under section 122(b)(1)(B) for the provision of services by such agency;

[(D) such funds paid to the State under section 125 will be used to supplement and to increase the level of funds that would otherwise be made available for the purposes for which Federal funds are provided and not to supplant such non-Federal funds; and

[(E) there will be reasonable State financial participation in the cost of carrying out the State plan.

[(5)(A) The plan must provide for the examination, not less often than once every three years, of the provision, and the need for the provision, in the State of the four Federal priority areas and the State priority area. Such examination shall be made consistent with subparagraph (B).

[(B) The plan must provide for the review and revision, not less often than once every three years, of the comprehensive Statewide plan to ensure the existence of appropriate planning, financial support and coordination, and to otherwise appropriately address, on a Statewide and comprehensive basis, urgent needs in the State for the provision of services for persons with developmental disabilities and the families of such persons. Such review and revision, and examination under subparagraph (A), shall take into account the reviews and analyses conducted, and the report prepared, under subsection (f), and shall, at a minimum, include—

[(i) an analysis of such priority areas in relation to limited support or lack of support for persons with developmental disabilities attributable to either physical impairment, mental impairment, or a combination of physical and mental impairments;

[(ii) an analysis of criteria for eligibility for services, including specialized services and special adaptation of generic services provided by agencies within the State, that may be causing persons with developmental disabilities to be excluded from receiving such services;

[(iii) an analysis of the special and common needs of all subpopulations of persons with developmental disabilities;

[(iv) consideration of the report conducted pursuant to subsection (f);

[(v) an analysis of services, assistive technology, or knowledge which may be unavailable to assist persons with developmental disabilities;

[(vi) an analysis of existing and projected fiscal resources;

[(vii) an analysis of any other issues identified by the State Planning Council; and

[(viii) the formulation of objectives in both policy reform and service demonstration to address the issues described in clauses (i) through (v) for all subpopulations of persons with developmental disabilities which may be identified by the State Planning Council.

[(C) The plan must be developed after consideration of the data collected by the State education agency under section 618(b)(3) of the Individuals with Disabilities Education Act.

[(D)(i) The plan must provide that no less than 65 percent of the amount available to the State under section 125 will be expended for activities in the Federal priority area of employment activities, and, at the discretion of the State, activities in any or all of the three other Federal priority areas and a State priority area, the conduct of the analyses specified in clauses (i) through (v) of subparagraph (B), the implementation of paragraph (3) and subsection (f), and activities which address the implementation of recommendations made in the report described in subsection (f), including recommendations which address unserved and underserved populations.

[(ii) The plan must provide that the remainder of the amount available to the State from allotments under section 125 (after making the expenditures required by clause (i) of this paragraph) shall be used for the planning, coordination, and administration of priority area activities for, and the advocacy for, persons with developmental disabilities.

[(E) The plan must provide that special financial and technical assistance shall be given to agencies or entities providing services for persons with developmental disabilities who are residents of geographical areas designated as urban or rural poverty areas.

[(6)(A)(i) The plan must provide that programs, and the facilities in which they are operated, under the plan for persons with developmental disabilities will be in accordance with standards prescribed by the Secretary in regulations.

[(ii) The plan must provide satisfactory assurances that buildings used in connection with the programs assisted under the plan will meet standards adopted pursuant to the Act of August 12, 1968 (known as the Architectural Barriers Act of 1968).

[(B) The plan must provide that services are provided in an individualized manner consistent with the requirements of section 123 (relating to habilitation plans).

[(C) The plan must contain or be supported by assurances satisfactory to the Secretary that the human rights of all persons with developmental disabilities (especially those persons without familial protection) who are receiving treatment, services, or habilitation under programs assisted under this part



will be protected consistent with section 110 (relating to rights of the developmentally disabled).

[(D) The plan must provide assurances that the State has undertaken affirmative steps to assure the participation in programs under this title of individuals generally representative of the population of the State, with particular attention to the participation of members of minority groups.

[(E) The plan must provide assurances that the State will provide the State Planning Council with a copy of each annual survey report and plan of corrections for cited deficiencies prepared pursuant to section 1902(a)(31)(B) of the Social Security Act with respect to any intermediate care facility for the mentally retarded in such State within 30 days after the completion of each such report or plan.

[(7)(A) The plan must provide for the maximum utilization of all available community resources including volunteers serving under the Domestic Volunteer Service Act of 1973 and other appropriate voluntary organizations, except that such volunteer services shall supplement, and shall not be in lieu of, services of paid employees.

[(B) The plan must provide for fair and equitable arrangements (as determined by the Secretary after consultation with the Secretary of Labor) to protect the interests of employees affected by actions under the plan to provide community living activities, including arrangements designed to preserve employee rights and benefits and to provide training and retraining of such employees where necessary and arrangements under which maximum efforts will be made to guarantee the employment of such employees.

[(8) The plan also must contain such additional information and assurances as the Secretary may find necessary to carry out the provisions and purposes of this part

[(c) The Secretary shall approve any State plan and any modification thereof which complies with the provisions of subsection (b). The Secretary shall not finally disapprove a State plan except after reasonable notice and opportunity for a hearing to the State.

[(d)(1) At the request of any State, a portion of any allotment or allotments of such State under this part for any fiscal year shall be available to pay one-half (or such smaller share as the State may request) of the expenditures found necessary by the Secretary for the proper and efficient exercise of the functions of the State designated agency; except that not more than 5 per centum of the total of the allotments of such State for any fiscal year, or \$50,000, whichever is less, shall be available for the total expenditures for such purpose by the State agency designated under subsection (b)(1)(B). Payments under this paragraph may be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine. State contributions pursuant to this paragraph may be counted as part of such State's non-Federal share of allotments under this part.

[(2) Any amount paid under paragraph (1) to any State for any fiscal year shall be paid on condition that there shall be expended from the State sources for such year for administration of the State plan approved under this section not less than the total amount ex-

pending for such purposes from such sources during the previous fiscal year.

[(e)(1) If a State agency that provides or pays for services for persons with developmental disabilities was a designated State agency for purposes of this part on the date of enactment of the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987 and the Governor of the State determines, before June 30, 1988, not to change the designation of such agency, such agency may continue to be a designated State agency for purposes of this part.

[(2) The determination of the Governor of a State under paragraph (1) shall be at the discretion of the Governor and shall be made by the Governor after the Governor has considered the comments of the general public and the non-State agency members of the State Planning Council with respect to the designation of such State agency, and after the Governor has made an independent assessment of the impact that the designation of such agency has on the ability of the State Planning Council to serve as an advocate for persons with developmental disabilities.

[(3) If the Governor of a State determines not to retain the designation of a State agency in effect on the date of enactment of the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987, the Governor shall, by October 1, 1990 designate another agency as the State agency in accordance with the requirements of subsection (b)(1)(B).

[(4) After the date of enactment of the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987, any designation of a State agency shall be made in accordance with the requirements of subsection (b)(1)(B).

[(5) After October 1, 1990, the Planning Council may issue a request for a review of the designation of the designated State agency by the Governor.

[(f)(1) Each State Planning Council shall conduct a comprehensive review and analysis of the eligibility for services provided, and the extent, scope, and effectiveness of, services provided and functions performed by, all State agencies (including agencies which provide public assistance) which affect or which potentially affect the ability of persons with developmental disabilities to achieve the goals of independence, productivity, and integration into the community, including persons with developmental disabilities attributable to physical impairment, mental impairment, or a combination of physical and mental impairments.

[(2) Each State Planning Council shall conduct a review and analysis of the effectiveness of, and consumer satisfaction with, the functions performed by, and services provided or paid for from Federal and State funds by each of the State agencies (including agencies providing public assistance) responsible for performing functions for, and providing services to, all persons with developmental disabilities in the State. Such review and analysis shall be based upon a survey of a representative sample of persons with developmental disabilities receiving services from each such agency, and if appropriate, shall include their families.

[(3) Each State Planning Council shall convene public forums, after the provision of notice within the State, in order to—

[(A) present the findings of the reviews and analyses prepared under paragraphs (1) and (2);

[(B) obtain comments from all interested persons in the State regarding the unserved and undeserved populations of persons with developmental disabilities which result from physical impairment, mental impairment, or a combination of physical and mental impairments; and

[(C) obtain comments on any proposed recommendations concerning the removal of barriers to services for persons with developmental disabilities and to connect such services to existing State agencies by recommending the designation of one or more State agencies, as appropriate, to be responsible for the provision and coordination of such services.

[(4) Each State Planning Council shall utilize the information developed pursuant to paragraphs (1), (2), and (3) in developing the State plan.]

#### **SEC. 122. STATE PLAN.**

(a) *IN GENERAL.*—Any State desiring to take advantage of this part shall have a State plan submitted to, and approved by, the Secretary under this section.

(b) *PLANNING CYCLE.*—The plan under subsection (a) shall be reviewed annually and revised at least once every 3 years.

(c) *STATE PLAN REQUIREMENTS.*—In order to be approved by the Secretary under this section, a State plan shall meet the requirements in paragraphs (1) through (5).

(1) *STATE COUNCIL.*—The plan shall provide for the establishment and maintenance of a State Developmental Disabilities Council in accordance with section 124 and describe the membership of such Council.

(2) *DESIGNATED STATE AGENCY.*—The plan shall identify the agency or office within the State designated to support the State Developmental Disabilities Council in accordance with this section and section 124(d).

(3) *COMPREHENSIVE REVIEW AND ANALYSIS.*—The plan shall contain a comprehensive review and analysis of the extent to which services and supports are available to, and the need for services and supports for, individuals with developmental disabilities and their families. Such review and analysis shall include—

(A) a description of the services, supports and other assistance being provided to, or to be provided to, individuals with developmental disabilities and their families under other federally assisted State programs, plans, and policies that the State conducts and in which individuals with developmental disabilities are or may be eligible to participate, including programs relating to education, job training, vocational rehabilitation, public assistance, medical assistance, social services, child welfare, maternal and child health, aging, programs for children with special health care needs, children's mental health, housing, transportation, technology, comprehensive health and mental health, and such other programs as the Secretary may specify;

(B) a description of the extent to which agencies operating such other federally assisted State programs pursue inter-agency initiatives to improve and enhance services, supports, and other assistance for individuals with developmental disabilities; and

(C) an examination of the provision, and the need for the provision, in the State of the four Federal priority areas and an optional State priority area, including—

(i) an analysis of such Federal and State priority areas in relation to the degree of support for individuals with developmental disabilities attributable to either physical impairment, mental impairment, or a combination of physical and mental impairments;

(ii) an analysis of criteria for eligibility for services, including specialized services and special adaptation of generic services provided by agencies within the State, that may exclude individuals with developmental disabilities from receiving such services;

(iii) consideration of the report conducted pursuant to section 124(e);

(iv) consideration of the data collected by the State educational agency under section 618 of the Individuals with Disabilities Education Act;

(v) an analysis of services, assistive technology, or knowledge that may be unavailable to assist individuals with developmental disabilities;

(vi) an analysis of existing and projected fiscal resources;

(vii) an analysis of any other issues identified by the State Developmental Disabilities Council; and

(viii) the formulation of objectives in systemic change, capacity building, and advocacy to address the issues described in clauses (i) through (v) for all subpopulations of individuals with developmental disabilities that may be identified by the State Developmental Disabilities Council.

(4) **PLAN OBJECTIVES.**—The plan shall—

(A) specify employment, and at the discretion of the State, any or all of the three other Federal priority areas and an optional State priority area that are selected by the State Developmental Disabilities Council for such Council's major systemic change, capacity building, and advocacy activities to be addressed during the plan period and describe the extent and scope of the Federal and State priority areas that will be addressed under the plan in the fiscal year;

(B) describe the specific 1-year and 3-year objectives to be achieved and include a listing of the programs, activities, and resources by which the State Developmental Disabilities Council will implement its systemic change, capacity building, and advocacy agenda in selected priority areas, and set forth the non-Federal share required to carry out each objective; and



(C) establish a method for the periodic evaluation of the plan's effectiveness in meeting the objectives described in subparagraph (B).

(5) ASSURANCES.—The plan shall contain or be supported by the assurances described in subparagraphs (A) through (N), which are satisfactory to the Secretary.

(A) USE OF FUNDS.—With respect to the funds paid to the State under section 125, the plan shall provide assurances that—

(i) such funds will be used to make a significant contribution toward enhancing the independence, productivity, and integration and inclusion into the community of individuals with developmental disabilities in various political subdivisions of the State;

(ii) such funds will be used to supplement and to increase the level of funds that would otherwise be made available for the purposes for which Federal funds are provided and not to supplant non-Federal funds;

(iii) such funds will be used to complement and augment rather than duplicate or replace services for individuals with developmental disabilities and their families who are eligible for Federal assistance under other State programs;

(iv) part of such funds will be made available by the State to public or private entities;

(v) not more than 25 percent of such funds will be allocated to the agency designated under section 124(d) for service demonstration by such agency and that such funds and demonstration services have been explicitly authorized by the State Developmental Disabilities Council;

(vi) not less than 65 percent of the amount available to the State under section 125 shall be expended for activities in the Federal priority area of employment activities, and, at the discretion of the State, activities in any or all of the three other Federal priority areas and an optional State priority area; and

(vii) the remainder of the amount available to the State from allotments under section 125 (after making expenditures required by clause (vi)) shall be used for the planning, coordination, administration, and implementation of priority area activities, and other activities relating to systemic change, capacity building, and advocacy to implement the responsibilities of the State Developmental Disabilities Council pursuant to section 124(c).

(B) STATE FINANCIAL PARTICIPATION.—The plan shall provide assurances that there will be reasonable State financial participation in the cost of carrying out the State plan.

(C) CONFLICT OF INTEREST.—The plan shall provide assurances that the State Developmental Disabilities Council has approved conflict of interest policies as of October 1, 1994, to ensure that no member of such Council shall cast

a vote on any matter that would provide direct financial benefit to the member or otherwise give the appearance of a conflict of interest.

(D) **URBAN AND RURAL POVERTY AREAS.**—The plan shall provide assurances that special financial and technical assistance shall be given to organizations that provide services, supports, and other assistance to individuals with developmental disabilities who live in areas designated as urban or rural poverty areas.

(E) **PROGRAM STANDARDS.**—The plan shall provide assurances that any direct services provided to individuals under the plan, and the buildings in which such programs, projects, and activities are operated, will meet standards prescribed by the Secretary in regulation and all applicable Federal and State accessibility standards.

(F) **INDIVIDUALIZED SERVICES.**—The plan shall provide assurances that any direct services provided to individuals with developmental disabilities and funded under this plan will be provided in an individualized manner, consistent with unique strengths, resources, priorities, concerns, abilities and capabilities of an individual.

(G) **HUMAN RIGHTS.**—The plan shall provide assurances that the human rights of all individuals with developmental disabilities (especially those individuals without familial protection) who are receiving services under programs assisted under this part will be protected consistent with section 110 (relating to rights of individuals with developmental disabilities).

(H) **MINORITY PARTICIPATION.**—The plan shall provide assurances that the State has taken affirmative steps to assure that participation in programs under this part is geographically representative of the State, and reflects the diversity of the State with respect to race and ethnicity.

(I) **INTERMEDIATE CARE FACILITY FOR THE MENTALLY RETARDED SURVEY REPORTS.**—The plan shall provide assurances that the State will provide the State Developmental Disabilities Council with a copy of each annual survey report and plan of corrections for cited deficiencies prepared pursuant to section 1902(a)(31) of the Social Security Act with respect to any intermediate care facility for the mentally retarded in such State not less than 30 days after the completion of each such report or plan.

(J) **VOLUNTEERS.**—The plan shall provide assurances that the maximum utilization of all available community resources including volunteers serving under the Domestic Volunteer Service Act of 1973 and other appropriate voluntary organizations will be provided for, except that such volunteer services shall supplement, and shall not be in lieu of, services of paid employees.

(K) **EMPLOYEE PROTECTIONS.**—The plan shall provide assurances that fair and equitable arrangements (as determined by the Secretary after consultation with the Secretary of Labor) will be provided to protect the interests of employees affected by actions under the plan to provide

community living activities, including arrangements designed to preserve employee rights and benefits and to provide training and retraining of such employees where necessary and arrangements under which maximum efforts will be made to guarantee the employment of such employees.

(L) **STAFF ASSIGNMENTS.**—The plan shall provide assurances that the staff and other personnel of the State Developmental Disabilities Council, while working for the Council, are responsible solely for assisting the Council in carrying out its duties under this part and are not assigned duties by the designated State agency or any other agency or office of the State.

(M) **NONINTERFERENCE.**—The plan shall provide assurances that the designated State agency or other office of the State will not interfere with systemic change, capacity building, and advocacy activities, budget, personnel, State plan development, or plan implementation of the State Developmental Disabilities Council.

(N) **OTHER ASSURANCES.**—The plan shall contain such additional information and assurances as the Secretary may find necessary to carry out the provisions and purposes of this part.

(d) **PUBLIC REVIEW, SUBMISSION, AND APPROVAL.**—

(1) **PUBLIC REVIEW.**—The plan shall be made available for public review and comment with appropriate and sufficient notice in accessible formats and take into account and respond to significant suggestions, as prescribed by the Secretary in regulation.

(2) **CONSULTATION WITH THE DESIGNATED STATE AGENCY.**—Before the plan is submitted to the Secretary, the State Developmental Disabilities Council shall consult with the designated State agency to ensure that the State plan is consistent with State law and to obtain appropriate State plan assurances.

(3) **PLAN APPROVAL.**—The Secretary shall approve any State plan and annual updates of such plan that comply with the provisions of subsections (a), (b), and (c). The Secretary may not finally disapprove a State plan except after providing reasonable notice and an opportunity for a hearing to the State.

**[HABILITATION PLANS]**

**[SEC. 123.** (a) The Secretary shall require as a condition to a State's receiving an allotment under this part that the State provide the Secretary satisfactory assurances that each program (including programs of any agency, facility, or project) which receives funds from the State's allotment under this part (1) has in effect for each developmentally disabled person who receives services from or under the program a habilitation plan meeting the requirements of subsection (b), and (2) provides for an annual review, in accordance with subsection (c) of each such plan.

**[(b)** A habilitation plan for a person with developmental disabilities shall meet the following requirements:

**[(1)** The plan shall be in writing.

[(2) The plan shall be developed jointly by (A) the person for whom the plan is established. (B) where appropriate, such person's parent or guardian or other representative, and (C) a representative or representatives of the program primarily responsible for delivering or coordinating the delivery of services to the person for whom the plan is established.

[(3) The plan shall contain a statement of the long-term habilitation goals for the person and the intermediate habilitation objectives relating to the attainments of such goals. Such goals should include the increase or support of independence, productivity, and integration into the community for the person. Such objectives shall be stated specifically and in sequence and shall be expressed in behavioral or other terms that provide measurable indices of progress. The plan shall (A) describe how the objectives will be achieved and the barriers that might interfere with the achievement of them, (B) state an objective criteria and an evaluation procedure and schedule for determining whether such objectives and goals are being achieved, and (C) provide for a case manager who will be responsible for coordinating the implementation of the plan.

[(4) The plan shall contain a statement (in readily understandable form) of specific habilitation services to be provided, shall identify each agency which will deliver such services, shall describe the personnel (and their qualifications) necessary for the provision of such services, and shall specify the date of the initiation of each service to be provided and the anticipated duration of each such service.

[(5) The plan shall specify the role and objectives of all parties to the implementation of the plan.

[(c) Each habilitation plan shall be reviewed at least annually by the agency primarily responsible for the delivery of services to the person for whom the plan was established or responsible for the coordination of the delivery of services to such person. In the course of the review, such person and the person's parents or guardian or other representative shall be given an opportunity to review such plan and to participate in its revision.]

#### [STATE PLANNING COUNCILS]

[SEC. 124. (a) Each State which receives assistance under this part shall establish a State Planning Council to serve as an advocate for all persons, with developmental disabilities by carrying out priority area activities.

[(b)(1) The members of the State Planning Council of a State shall be appointed by the Governor of the State from among the residents of that State.

[(2) The Governor of each State shall make appropriate provisions for the rotation of membership on the State Planning Council.

[(3) Each State Planning Council shall at all times include in its membership representatives of the principal State agencies (including the State agency that administers funds provided under the Rehabilitation Act of 1973, the State agency that administers funds provided under the Individual With Disabilities Education Act the State agency that administers funds provided under the Older Americans Act of 1965, and the State agency that administers



funds provided under title XIX of the Social Security Act for persons with developmental disabilities), higher education training facilities, each university affiliated program or satellite center in the State, the State protection and advocacy system established under section 142, local agencies, and nongovernmental agencies and private nonprofit groups concerned with services for persons with developmental disabilities in that State.

[(4) At least one-half of the membership of each State Planning Council shall consist of persons who—

[(A) are persons with developmental disabilities;

[(B) are parents or guardians of such persons; or

[(C) are immediate relatives or guardians of persons with mentally impairing developmental disabilities, and who are not employees of a State agency which receives funds or provides services under this part, who are not managing employees (as defined in section 1126(b) of the Social Security Act) of any other entity which receives funds or provides services under this part, and who are not persons with an ownership or control interest (within the meaning of section 1124(a)(3) of the Social Security Act) with respect to such an entity.

[(5) Of the members of the State Planning Council described in paragraph (4)—

[(A) at least one-third shall be persons with developmental disabilities; and

[(B)(i) at least one-third shall be individuals described in subparagraph (C) of paragraph (4), and (ii) at least one of such individuals shall be an immediate relative or guardian of an institutionalized or previously institutionalized person with a developmental disability.

[(c)(1) Each State Planning Council shall prepare and approve a budget using amounts paid to the State under this part to fund all activities under this part (except administrative costs described in section 122(d)(1) and to hire such staff and obtain the services of such professional, technical, and clerical personnel consistent with State law as the State Planning Council determines to be necessary to carry out its functions under this part.

[(2) Each State Planning Council shall, consistent with State law, hire a Director of the State Planning Council who shall be supervised and evaluated by the State Planning Council and who shall hire and supervise the staff of the State Planning Council.

[(3) The staff and other personnel of a State Planning Council, while working for the State Planning Council, shall be responsible solely for assisting the State Planning Council in carrying out its duties under this part and shall not be assigned duties by the designated State agency or any other agency or office of the State.

[(d) Each State Planning Council shall—

[(1) develop and submit after consultation with the State agency designated under section 122(b)(1)(B) the State plan required by this part including the specifications of Federal and State priority area activities under section 122(b)(5)(D)(i);

[(2) monitor, review, and evaluate, not less often than annually, the implementation of such State plan;

[(3) to the maximum extent feasible, review and comment on all State plans in the State which relate to programs affecting persons with developmental disabilities; and

[(4) submit to the Secretary, through the Governor, such periodic reports on its activities as the Secretary may reasonably request, and keep such records and afford such access thereto as the Secretary finds necessary to verify such reports.]

**SEC. 124. STATE DEVELOPMENTAL DISABILITIES COUNCILS AND DESIGNATED STATE AGENCIES.**

(a) *IN GENERAL.*—Each State that receives assistance under this part shall establish and maintain a State Developmental Disabilities Council (hereafter in this section referred to as the “Council”) to conduct systemic change, capacity building, and advocacy activities on behalf of all individuals with developmental disabilities. The Council shall have the authority to fulfill its responsibilities described in subsection (c).

(b) *COUNCIL MEMBERSHIP.*—

(1) *COUNCIL APPOINTMENTS.*—The members of the Council of a State shall be appointed by the Governor of the State from among the residents of that State. The Governor shall select members of the Council, at his or her discretion, after soliciting recommendations from organizations representing a broad range of individuals with developmental disabilities and individuals interested in individuals with developmental disabilities, including the non-State agency members of the Council. The Council shall coordinate Council and public input to the Governor regarding all recommendations. To the extent feasible, the membership of the Council shall be geographically representative of the State and reflect the diversity of the State with respect to race and ethnicity.

(2) *MEMBERSHIP ROTATION.*—The Governor shall make appropriate provisions to rotate the membership of the Council. Such provisions shall allow members to continue to serve on the Council until such members’ successors are appointed. The Council shall notify the Governor and the Secretary, and the Secretary shall contact the Governor regarding membership requirements, when vacancies remain unfilled for a significant period of time.

(3) *REPRESENTATION OF AGENCIES AND ORGANIZATIONS.*—Each Council shall at all times include representatives of the principal State agencies (including the State agencies that administer funds provided under the Rehabilitation Act of 1973, the Individuals with Disabilities Education Act, the Older Americans Act, and title XIX of the Social Security Act), institutions of higher education, each university affiliated program in the State established under part D, the State protection and advocacy system established under part C, and local agencies, nongovernmental agencies, and private nonprofit groups concerned with services for individuals with developmental disabilities in the State in which such agencies and groups are located. Such representatives shall—

(A) have sufficient authority to engage in policy planning and implementation on behalf of the department, agency, or program such representatives represent; and

(B) recuse themselves from any discussion of grants or contracts for which such representatives' departments, agencies, or programs are grantees or applicants and comply with the conflict of interest policies required under section 122(c)(5)(C).

(4) **REPRESENTATION OF INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES.**—Not less than 50 percent of the membership of each Council shall consist of individuals who are—

(A)(i) individuals with developmental disabilities;

(ii) parents or guardians of children with developmental disabilities; or

(iii) immediate relatives or guardians of adults with mentally impairing developmental disabilities who cannot advocate for themselves; and

(B) not employees of a State agency that receives funds or provides services under this part, and who are not managing employees (as defined in section 1126(b) of the Social Security Act) of any other entity that receives funds or provides services under this part.

(5) **COMPOSITION OF MEMBERSHIP WITH DEVELOPMENTAL DISABILITIES.**—Of the members of the Council described in paragraph (4)—

(A) one-third shall be individuals with developmental disabilities as described in paragraph (4)(A)(i);

(B) one-third shall be parents of children with developmental disabilities as described in paragraph (4)(A)(ii), or immediate relatives or guardians of adults with mentally impairing developmental disabilities as described in paragraph (4)(A)(iii); and

(C) one-third shall be a combination of individuals described in paragraph (4)(A).

(6) **INSTITUTIONALIZED INDIVIDUALS.**—Of the members of the Council described in paragraph (5), at least one shall be an immediate relative or guardian of an institutionalized or previously institutionalized individual with a developmental disability or an individual with a developmental disability who resides or previously resided in an institution. This paragraph shall not apply with respect to a State if such an individual does not reside in that State.

(c) **COUNCIL RESPONSIBILITIES.**—A Council, through Council members, staff, consultants, contractors, or subgrantees, shall have the responsibilities described in paragraphs (1) through (11).

(1) **SYSTEMIC CHANGE, CAPACITY BUILDING, AND ADVOCACY.**—The Council shall serve as an advocate for individuals with developmental disabilities and conduct programs, projects, and activities that carry out the purpose under section 121.

(2) **EXAMINATION OF PRIORITY AREAS.**—Not less than once every 3 years, the Council shall examine the provision of and need for the four Federal priority areas and an optional State priority area to address, on a statewide and comprehensive basis, urgent needs for services, supports, and other assistance

for individuals with developmental disabilities and their families, pursuant to section 122.

(3) *STATE PLAN DEVELOPMENT.*—The Council shall develop and submit to the Secretary the State plan required under section 122 after consultation with the designated State agency under the State plan. Such consultation shall be solely for the purposes of obtaining State assurances and ensuring consistency of the plan with State law.

(4) *STATE PLAN IMPLEMENTATION.*—The Council shall implement the State plan by conducting and supporting the Federal priority area of employment, not less than one of the remaining three Federal priority areas, and an optional State priority area as defined in section 102, through systemic change, capacity building, and advocacy activities such as those described in subparagraphs (A) through (K).

(A) *DEMONSTRATION OF NEW APPROACHES.*—The Council may conduct, on a time-limited basis, the demonstration of new approaches to enhance the independence, productivity, and integration and inclusion into the community of individuals with developmental disabilities. This may include making successful demonstrations generally available through sources of funding other than funding under this part, and may also include assisting those conducting such successful demonstration activities to develop strategies for securing funding from other sources.

(B) *OUTREACH.*—The Council may conduct activities to reach out to assist and enable individuals with developmental disabilities and their families who otherwise might not come to the attention of the Council to obtain services, supports, and other assistance, including access to special adaptation of generic services or specialized services.

(C) *TRAINING.*—The Council may conduct training for individuals with developmental disabilities, their families, and personnel (including professionals, paraprofessionals, students, volunteers, and other community members) to enable such individuals to obtain access to, or to provide, services, supports and other assistance, including special adaptation of generic services or specialized services for individuals with developmental disabilities and their families. To the extent that training activities are provided, such activities shall be designed to promote the empowerment of individuals with developmental disabilities and their families.

(D) *SUPPORTING COMMUNITIES.*—The Council may assist neighborhoods and communities to respond positively to individuals with developmental disabilities and their families by encouraging local networks to provide informal and formal supports and enabling communities to offer such individuals and their families access, resources, and opportunities.

(E) *INTERAGENCY COLLABORATION AND COORDINATION.*—The Council may promote interagency collaboration and coordination to better serve, support, assist, or advocate for



individuals with developmental disabilities and their families.

(F) **COORDINATION WITH RELATED COUNCILS, COMMITTEES, AND PROGRAMS.**—The Council may conduct activities to enhance coordination with—

(i) other councils or committees, authorized by Federal or State statute, concerning such individuals with disabilities (such as the State Interagency Coordinating Council under part H of the Individuals with Disabilities Education Act, the State Rehabilitation Advisory Council and the Statewide Independent Living Council under the Rehabilitation Act of 1973, the State Mental Health Planning Council under part B of title XIX of the Public Health Service Act and other similar councils or committees);

(ii) parent training and information centers under part D of the Individuals with Disabilities Education Act and other federally funded projects that assist parents of children with disabilities; and

(iii) other groups interested in systemic change, capacity building, and advocacy for individuals with disabilities.

(G) **BARRIER ELIMINATION, SYSTEMS DESIGN, AND CITIZEN PARTICIPATION.**—The Council may conduct activities to eliminate barriers, enhance systems design and redesign, and enhance citizen participation to address issues identified in the State plan.

(H) **PUBLIC EDUCATION AND COALITION DEVELOPMENT.**—The Council may conduct activities to educate the public about the capabilities, preferences, and needs of individuals with developmental disabilities and their families and to develop and support coalitions that support the policy agenda of the Council, including training in self-advocacy, educating policymakers, and citizen leadership skills.

(I) **INFORMING POLICYMAKERS.**—The Council may provide information to Federal, State, and local policymakers, including the Congress, the Federal executive branch, the Governor, State legislature, and State agencies, in order to increase the ability of such policymakers to offer opportunities and to enhance or adapt generic services or provide specialized services to individuals with developmental disabilities and their families by conducting studies and analyses, gathering information, and developing and disseminating model policies and procedures, information, approaches, strategies, findings, conclusions, and recommendations.

(J) **PREVENTION.**—The Council may conduct prevention activities as defined in section 102.

(K) **OTHER ACTIVITIES.**—The Council may conduct other systemic change, capacity building, and advocacy activities to expand and enhance the independence, productivity, and integration and inclusion into the community of individuals with developmental disabilities throughout the State on a comprehensive basis.

(5) **STATE PLAN MONITORING.**—Not less than once each year, the Council shall monitor, review, and evaluate the implementation and effectiveness of the State plan in meeting such plan's objectives.

(6) **REVIEW OF DESIGNATED STATE AGENCY.**—The Council shall periodically review the appropriateness of the designated State agency and make any recommendations for change to the Governor.

(7) **REPORTS.**—The Council shall submit to the Secretary, through the Governor, periodic reports on its activities as the Secretary may reasonably request, and keep such records and afford such access thereto as the Secretary finds necessary to verify such reports.

(8) **BUDGET.**—Each Council shall prepare, approve, and implement a budget using amounts paid to the State under this part to fund and implement all programs, projects, and activities under this part including—

(A) conducting such hearings and forums as the Council may determine to be necessary to carry out the duties of the Council, reimbursing Council members of the Council for reasonable and necessary expenses for attending Council meetings and performing Council duties (including child care and personal assistance services), paying compensation to a member of the Council, if such member is not employed or must forfeit wages from other employment, for each day such member is engaged in performing the duties of the Council, supporting Council member and staff travel to authorized training and technical assistance activities including inservice training and leadership development, and appropriate subcontracting activities;

(B) hiring and maintaining sufficient numbers and types of staff (qualified by training and experience) and obtaining the services of such professional, consulting, technical, and clerical personnel (qualified by training and experience), consistent with State law, as the Council determines to be necessary to carry out its functions under this part, except that such State shall not apply hiring freezes, reductions in force, prohibitions on staff travel, or other policies that negatively affect the provision of staff support of the Council; and

(C) directing the expenditure of funds for grants, contracts, interagency agreements that are binding contracts, and other activities authorized by the approved State plan.

(9) **STAFF HIRING AND SUPERVISION.**—A Council shall, consistent with State law, recruit and hire a Director of the Council, should the position of Director become vacant, and supervise and annually evaluate the Director. The Director shall hire, supervise, and annually evaluate the staff of the Council. Council recruitment and hiring of staff shall be consistent with Federal and State nondiscrimination laws. Dismissal of personnel shall be for cause only, based on documented performance evaluations and consistent with State law and personnel policies. Council directors and staff who are exempt from State person-

nel policies may be dismissed based only on documented performance criteria.

(10) **STAFF ASSIGNMENTS.**—The staff and other personnel, while working for the Council, shall be responsible solely for assisting the Council in carrying out its duties under this part and shall not be assigned duties by the designated State agency or any other agency or office of the State.

(11) **CONSTRUCTION.**—Nothing in this part shall be construed to preclude a Council from engaging in systemic change, capacity building, and advocacy activities for individuals with disabilities other than developmental disabilities, where appropriate.

(d) **DESIGNATED STATE AGENCY.**—

(1) **IN GENERAL.**—Each State that receives assistance under this part shall designate the State agency that shall, on behalf of the State, provide support to the Council. After the date of enactment of the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1993, any designation of a State agency shall be made in accordance with the requirements of this subsection.

(2) **DESIGNATION.**—

(A) **TYPE OF AGENCY.**—Except as provided in this subsection, the designated State agency shall be—

(i) the Council if such Council may be the designated State agency under the laws of the State;

(ii) a State agency that does not provide or pay for services made available to individuals with developmental disabilities; or

(iii) a State office, including the immediate office of the Governor of the State or a State planning office.

(B) **CONDITIONS FOR CONTINUATION OF STATE SERVICE AGENCY DESIGNATION.**—

(i) **DESIGNATION BEFORE ENACTMENT.**—If a State agency that provides or pays for services for individuals with developmental disabilities was a designated State agency for purposes of this part on the date of enactment of the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1993, and the Governor of the State (or legislature, where appropriate and in accordance with State law) determines prior to June 30, 1994, not to change the designation of such agency, such agency may continue to be a designated State agency for purposes of this part.

(ii) **CRITERIA FOR CONTINUED DESIGNATION.**—The determination at the discretion of the Governor (or legislature as the case may be) shall consider the comments and recommendations of the general public and a majority of the non-State agency members of the Council with respect to the designation of such State agency, and after the Governor (or legislature as the case may be) has made an independent assessment that the designation of such agency shall not interfere with the budget, personnel, priorities, or other action of the Council, and the ability of the Council to serve as an

advocate for individuals with developmental disabilities.

(C) **REVIEW OF DESIGNATION.**—After October 1, 1993, the Council may request a review of the designation of the designated State agency by the Governor (or legislature as the case may be). The Council shall provide documentation concerning the reason the Council desires a change to be made and make a recommendation to the Governor (or legislature as the case may be) regarding a preferred designated State agency.

(D) **APPEAL OF DESIGNATION.**—After the review is completed under subparagraph (C), a majority of the non-State agency members of the Council may appeal to the Secretary for a review of the designation of the designated State agency if Council independence as an advocate is not assured because of the actions or inactions of the designated State agency.

(3) **RESPONSIBILITIES.**—The designated State agency shall, on behalf of the State, have the responsibilities described in subparagraphs (A) through (F).

(A) **SUPPORT SERVICES.**—The designated State agency shall provide required assurances and support services as requested by and negotiated with the Council.

(B) **FISCAL RESPONSIBILITIES.**—The designated State agency shall—

(i) receive, account for, and disperse funds under this part based on the State plan required in section 122; and

(ii) provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of, and accounting for, funds paid to the State under this part.

(C) **RECORDS, ACCESS, AND FINANCIAL REPORTS.**—The designated State agency shall keep such records and afford access thereto as the Secretary and the Council determine necessary. The designated State agency, if other than the Council, shall provide timely financial reports at the request of the Council regarding the status of expenditures, obligations, liquidation, and the Federal and non-Federal share.

(D) **NON-FEDERAL SHARE.**—The designated State agency, if other than the Council, shall provide the required non-Federal share defined in section 125A(c).

(E) **ASSURANCES.**—The designated State agency shall assist the Council in obtaining the appropriate State plan assurances and in ensuring that the plan is consistent with State law.

(F) **MEMORANDUM OF UNDERSTANDING.**—On the request of the Council, the designated State agency shall enter into a memorandum of understanding with the Council delineating the roles and responsibilities of the designated State agency.

(4) **USE OF FUNDS FOR DESIGNATED STATE AGENCY RESPONSIBILITIES.**—



(A) **NECESSARY EXPENDITURES OF STATE DESIGNATED AGENCY.**—At the request of any State, a portion of any allotment or allotments of such State under this part for any fiscal year shall be available to pay up to one-half (or the entire amount if the Council is the designated State agency) of the expenditures found necessary by the Secretary for the proper and efficient exercise of the functions of the State designated agency, except that not more than 5 percent of the total of the allotments of such State for any fiscal year, or \$50,000, whichever is less, shall be made available for the total expenditure for such purpose by the State agency designated under this subsection.

(B) **CONDITION FOR FEDERAL FUNDING.**—Amounts shall be provided under subparagraph (A) to a State for a fiscal year only on condition that there shall be expended from State sources for carrying out the responsibilities of the designated State agency under paragraph (3) not less than the total amount expended for carrying out such responsibilities from such sources during the previous fiscal year except in such year as the Council may become the designated State agency.

(C) **SUPPORT SERVICES PROVIDED BY OTHER AGENCIES.**—With the agreement of the designated State agency, the Council may use or contract with agencies other than the designated State agency to perform the functions of the designated State agency.

(e) **1990 REPORT.**—Not later than January 1, 1990, each Council shall complete the reviews, analyses, and final report described in this section.

(1) **COMPREHENSIVE REVIEW AND ANALYSIS.**—Each Council shall conduct a comprehensive review and analysis of the eligibility for services provided, and the extent, scope, and effectiveness of, services provided and functions performed by, all State agencies (including agencies that provide public assistance) that affect or that potentially affect the ability of individuals with developmental disabilities to achieve the goals of independence, productivity, and integration and inclusion into the community, including individuals with developmental disabilities attributable to physical impairment, mental impairment, or a combination of physical and mental impairments.

(2) **CONSUMER SATISFACTION.**—Each Council shall conduct a review and analysis of the effectiveness of, and consumer satisfaction with, the functions performed by, and services provided or paid for from Federal and State funds by, each of the State agencies (including agencies that provide public assistance) responsible for performing functions for, and providing services to, all individuals with developmental disabilities in the State. Such review and analysis shall be based upon a survey of a representative sample of individuals with developmental disabilities receiving services from each such agency, and if appropriate, shall include such individual's families.

(3) **PUBLIC REVIEW AND COMMENT.**—Each Council shall convene public forums, after the provision of notice within the State, in order to—

(A) present the findings of the reviews and analyses prepared under paragraphs (1) and (2);

(B) obtain comments from all interested individuals in the State regarding the unserved and underserved populations of individuals with developmental disabilities that result from physical impairment, mental impairment, or a combination of physical and mental impairments; and

(C) obtain comments on any proposed recommendations concerning the removal of barriers to services for individuals with developmental disabilities and to connect such services to existing State agencies by recommending the designation of one or more State agencies, as appropriate, to be responsible for the provision and coordination of such services.

(4) **BASIS FOR STATE PLAN.**—Each Council shall utilize the information developed pursuant to paragraphs (1), (2), and (3) in developing the State plan.

#### [STATE ALLOTMENTS]

[SEC. 125] \* \* \*

#### SEC. 125. STATE ALLOTMENTS

[(a)(1)] “(A) **ALLOTMENTS.**—

“(1) **IN GENERAL.**—For each fiscal year, the Secretary shall, in accordance with regulations and this paragraph, allot the sums appropriated for such year under section 130 among the States on the basis of—

(A) the population.

(B) the extent of need for services for persons with developmental disabilities, and

(C) the financial need,

of the respective States. Sums allotted to the States under this section shall be used in accordance with approved State plans under section 122 for the provision under such plans of services for persons with developmental disabilities.

[(2) **Adjustments**] **ADJUSTMENTS**—*Adjustments* in the amounts of State allotments based on subparagraphs (A), (B), and (C) of paragraph (1) [may be] *shall be* made not more often than annually. The Secretary shall notify States of any adjustment made [not less] *and the percentage of the total appropriation for each State not less* than six months before the beginning of the fiscal year in which such adjustment is to take effect.

[(3)(A) Except as provided in paragraph (4), for any fiscal year the allotment under paragraph (1)—

[(i) to each of American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau may not be less than \$200,000; and

[(ii) to any other State may not be less than the greater of \$350,000 or the amount of the allotment (determined without regard to subsection (d)) received by the State for the fiscal year ending September 30, 1990.]

(3) **MINIMUM ALLOTMENT.**—

(A) **IN GENERAL.**—*Except as provided in paragraph (4), for any fiscal year the allotment under this section—*

(i) *to each of American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Republic of Palau (until the Compact of Free Association with Palau takes effect) may not be less than the greater of—*

(I) *\$210,000; or*

(II) *the greater of the allotment received by such State for fiscal year 1992, or the allotment received by such State for fiscal year 1993, under this section (determined without regard to subsection (d)); and*

(ii) *to any State not described in clause (i), may not be less than the greater of—*

(I) *\$400,000; or*

(II) *the greater of the allotment received by such State for fiscal year 1992, or the allotment received by such State for fiscal year 1993, under this section (determined without regard to subsection (d)).*

[(B) Notwithstanding] (B) **REDUCTION OF ALLOTMENT.**—*Notwithstanding subparagraph (A), if the aggregate of the amounts to be allotted to each State pursuant to subparagraph (A) in any fiscal year exceeds the total amount appropriated under section 130 for such fiscal year, the amount to be allotted to a State for such fiscal year shall be an amount which bears the same ratio to the amount which is to be allotted to the State pursuant to such subparagraph as the total amount appropriated under section 130 for such fiscal years bears to the total of the amount required to be appropriated under such section for allotments to provide each State with the allotment required by such subparagraph.*

[(4) In any case in which amounts appropriated under section 130 for a fiscal year exceeds \$65,000,000, the allotment under paragraph (1) for such fiscal year—

[(A) to each of American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau may not be less than \$210,000; and

[(B) to each of the several States, Puerto Rico or the District of Columbia may not be less than \$400,000.]

(4) **MAXIMUM ALLOTMENT.**—

(A) **IN GENERAL.**—*In any case in which amounts appropriated under section 130 for a fiscal year exceeds \$75,000,000, the allotment under this section for such fiscal year—*

(i) *to each of American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands or the Republic of Palau (until the Compact of Free Association with Palau takes effect) may not be less than the greater of—*

(I) \$220,000; or

(II) the greater of the allotment received by such State for fiscal year 1992, or the allotment received by such State for fiscal year 1993, under this section (determined without regard to subsection (d)); and

(ii) to any State not described in clause (i) may not be less than the greater of—

(I) \$450,000; or

(II) the greater of the allotment received by such State for fiscal year 1992, or the allotment received by such State for fiscal year 1993, under this section (determined without regard to subsection (d)).

(B) **REDUCTION OF ALLOTMENT.**—The requirements of paragraph (3)(B) shall apply with respect to amounts to be allotted to States under subparagraph (A), in the same manner and to the same extent as such requirements apply with respect to amounts to be allotted to States under paragraph (3)(A).

(5) **[In determining], STATE SUPPORTS, SERVICES, AND OTHER ACTIVITIES.**—In determining for purposes of paragraph (1)(B), the extent of need in any State for services for persons with developmental disabilities, the Secretary shall take into account the scope and extent of the services described, pursuant to **[section 122(b)(2)(C)] section 122(c)(3)(A)**, in the State plan of the State.

(6) **[In any case] INCREASE IN ALLOTMENTS.**—In any case in which the total amount appropriated under section 130 for a fiscal year exceeds the total amount appropriated under such section for the preceding fiscal year by a percentage greater than the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 100(c)(1) of the Rehabilitation Act of 1973, the Secretary shall increase each of the minimum allotments under paragraphs (3) and (4) by an amount which bears the same ratio to the amount of such minimum allotment (including any increases in such minimum allotment under this paragraph for prior fiscal years) as the amount which is equal to the difference between—

(A) the total amount appropriated under section 130 for the fiscal year for which the increase in minimum allotment is being made, minus

(B) the total amount appropriated under section 130 for the immediately preceding fiscal year,

bears to the total amount appropriated under section 130 for such preceding fiscal year.

(b) **[Any amount] UNOBLIGATED FUNDS.**—Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available to such State for the next fiscal year for the purposes for which such amount was paid.

(c) **[Whenever] COOPERATIVE EFFORTS BETWEEN STATES.**—Whenever the State plan approved in accordance with section 122 provides for cooperative or joint effort between States or between or among agencies, public or private, in more than one State, por-



tions of funds allotted to one or more such cooperating States may be combined in accordance with the agreements between the agencies involved.

(d) [The amount] *REALLOTMENTS*.—*The amount of an allotment to a State for a fiscal year which the Secretary determines will not be required by the State during the period for which it is available for the purpose for which allotted shall be available for reallocation by the Secretary from time to time, on such date or dates as the Secretary may fix (but not earlier than thirty days after the Secretary has published notice of the intention of the Secretary to make such reallocation in the Federal Register), to other States with respect to which such a determination has not been made, in proportion to the original allotments of such States for such fiscal year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use during such period; and the total of such reductions shall be similarly reallocated among the States whose proportionate amounts were not so reduced. Any amount so reallocated to a State for a fiscal year shall be deemed to be a part of its allotment under subsection (a) for such fiscal year.*

#### **SEC. 125A. FEDERAL AND NON-FEDERAL SHARE.**

(a) *AGGREGATE COSTS*.—*The Federal share of all projects in a State supported by an allotment to the State under this part may not exceed 75 percent of the aggregate necessary costs of all such projects as determined by the Secretary, except that—*

*(1) in the case of projects whose activities or products target individuals with developmental disabilities who live in urban or rural poverty areas, the Federal share of all such projects may not exceed 90 percent of the aggregate necessary costs of such projects or activities, as determined by the Secretary; and*

*(2) in the case of projects or activities undertaken by the Council or Council staff to implement State plan priority activities, the Federal share of all such activities may be up to 100 percent of the aggregate necessary costs of such activities.*

(b) *NONDUPLICATION*.—*In determining the amount of any State's Federal share of the expenditures incurred by such State under a State plan approved under section 122, the Secretary shall not consider—*

*(1) any portion of such expenditures that are financed by Federal funds provided under any provision of law other than section 125; and*

*(2) the amount of any non-Federal funds required to be expended as a condition of receipt of such Federal funds.*

#### **(c) NON-FEDERAL SHARE.—**

*(1) IN KIND CONTRIBUTIONS*.—*The non-Federal share of the cost of any project assisted by a grant or an allotment under this part may be provided in kind.*

*(2) CONTRIBUTIONS OF POLITICAL SUBDIVISIONS, PUBLIC, OR PRIVATE ENTITIES.—*

*(A) IN GENERAL*.—*Expenditures on projects or activities by a political subdivision of a State or by a public or private entity shall, subject to such limitations and conditions as the Secretary may by regulation prescribe, be considered*

*to be expenditures by such State in the case of a project under this part.*

*(B) STATE CONTRIBUTIONS.—State contributions, including contributions by the designated State agency to provide support services to the Council pursuant to section 124(d)(4), may be counted as part of such State's non-Federal share of allotments under this part.*

*(3) VARIATIONS OF THE NON-FEDERAL SHARE.—The non-Federal share required on a grant-by-grant basis may vary.*

**[PAYMENTS TO THE STATES FOR PLANNING, ADMINISTRATION AND SERVICES]**

**[SEC. 126.]**

**SEC. 126. PAYMENTS TO THE STATES FOR PLANNING, ADMINISTRATION, AND SERVICES.**

*(a) STATE PLAN EXPENDITURES.—From each State's allotments for a fiscal year under section 125, the State shall be paid the Federal share of the expenditures, other than expenditures for construction, incurred during such year under its State plan approved under this part. Such payments shall be made from time to time in advance on the basis of estimates by the Secretary of the sums the State will expend under the State plan, except that such adjustments as may be necessary shall be made on account of previously made underpayments or overpayments under this section.*

*(b) SUPPORT SERVICES.—Payments to States for support services provided by the designated State agency pursuant to section 124(d)(4) may be made in advance or by way of reimbursement, and in such installments as the Secretary may determine.*

**[WITHHOLDING OF PAYMENTS FOR PLANNING, ADMINISTRATION AND SERVICES]**

**[SEC. 127.]**

**SEC. 127. WITHHOLDING OF PAYMENTS FOR PLANNING, ADMINISTRATION, AND SERVICES.**

Whenever the Secretary, after reasonable notice and opportunity for hearing to the State Planning Council and the appropriate State agency designated pursuant to section 122(b)(1) finds that—

(1) there is a failure to comply substantially with any of the provisions required by section 122 to be included in the State plan, particularly [sections] section 122(b)(3) or 122(f); or

(2) there is a failure to comply substantially with any regulations of the Secretary which are applicable to this part, the Secretary shall notify such State Council and agency or agencies that further payments will not be made to the State under section 125 (or, in the discretion of the Secretary, that further payments will not be made to the State under section 125 for activities in which there is such failure), until the Secretary is satisfied that there will no longer be such failure. Until the Secretary is so satisfied, the Secretary shall make no further payment to the State under section 125, or shall limit further payment under section 125 to such State to activities in which there is no such failure.

## [NONDUPLICATION]

[SEC. 128. In determining the amount of any State's Federal share of the expenditures incurred by it under a State plan approved under section 122, there shall be disregarded (1) any portion of such expenditures which are financed by Federal funds provided under any provision of law other than section 125, and (2) the amount of any non-Federal funds required to be expended as a condition of receipt of such Federal funds.]

## [APPEALS BY STATES]

## [SEC. 129.]

**SEC. 129. APPEALS BY STATES.**

If any State is dissatisfied with the Secretary's action under section 122(c) or section 127, such State may appeal to the United States court of appeals for the circuit in which such State is located, by filing a petition with such court within sixty days after such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by the Secretary for that purpose. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the action, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part, temporarily or permanently, but until the filing of the record, the Secretary may modify or set aside the order of the Secretary. The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may there-upon make new or modified findings of the fact and may modify the previous action of the Secretary, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence. The judgment of the court affirming or setting aside, in whole or in part, any action of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code. The commencement of proceedings under this section shall not, unless so specifically ordered by the court, operate as a stay of the Secretary's action.

## AUTHORIZATION OF APPROPRIATIONS

SEC. 130. [6030] For allotments under section 125, there are authorized to be appropriated \$77,400,000 for [fiscal year 1991] *fiscal year 1994*, and such sums as may be necessary for each of the fiscal [years 1992 and 1993] *years 1995 and 1996*.

**PART C—[PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS]**  
**PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS**

## [PURPOSE]

## [SEC. 141.]

**SEC. 141. PURPOSE.**

It is the purpose of this part to provide for allotments to support a [system] *Protection and Advocacy system* (hereafter referred to in this part as the "system") in each State to protect the legal and human rights of [persons] *individuals* with developmental disabilities in accordance with section 142.

**[SYSTEM REQUIRED]****[SEC. 142.]****SEC. 143. SYSTEM REQUIRED.**

(a) [In order] **SYSTEM REQUIRED.**—*In order for a State to receive an allotment under part B—*

(1) the State must have in effect a system to protect and advocate the rights of [persons] *individuals* with developmental disabilities;

(2) such system must—

(A) have the authority to—

(i) pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of such [persons] *individuals* within the State who are or who may be eligible for treatment, services, or habilitation, or who are being considered for a change in living arrangements, with particular attention to members of [minority] *underserved geographical areas and ethnic and racial minority groups*; and

\* \* \* \* \*

[(C) on an annual basis, develop a statement of objectives and priorities and provide to the public, including persons with disabilities and their representatives, as appropriate, the developmental disability council and the university affiliated program (if applicable within a State), an opportunity to comment on the objectives and priorities established by, and activities of, the system, including—

[(i) the objectives and priorities for the system activities for each year, and the rationale for the establishment of such objectives; and

[(ii) the coordination with the advocacy programs set out in the Rehabilitation Act of 1973, the Older Americans Act of 1965, and the Protection and Advocacy for the Mentally Ill Act.]

(C) on an annual basis, develop a statement of objectives and priorities for the system's activities; and

(D) on an annual basis, provide to the public, including individuals with developmental disabilities attributable to either physical impairment, mental impairment, or a combination of physical or mental impairments, and their representatives, as appropriate, non-State agency representatives of the State Developmental Disabilities Council, and the university affiliated program (if applicable within a State), an opportunity to comment on—



(i) *the objectives and priorities established by the system and the rationale for the establishment of such objectives; and*

(ii) *the activities of the system, including the coordination with the advocacy programs under the Rehabilitation Act of 1973, the Older Americans Act of 1965, and the Protection and Advocacy for Mentally Ill Individuals Act of 1986, and with other related programs, including the Parent Training and Information Centers, education ombudsman programs and assistive technology projects;*

[(D)](E) establish a grievance procedure for clients or prospective clients of the system to assure that persons with developmental disabilities have full access to services of the system;

[(E)](F) not be administered by the State [Planning Council]; *Developmental Disabilities Council authorized under part B*

[(F)](G) be independent of any agency which provides treatment, services, or habilitation to persons with developmental disabilities; [and]

(H) *have access at reasonable times and locations to any resident who is an individual with a developmental disability in a facility that is providing services, supports, and other assistance to such a resident;*

[(G)](I) have access to all records of—

(i) any [person] *individual* with developmental disabilities who is a client of the system if such person, or the legal guardian, conservator, or other legal representative of such [person] *individual* has authorized the system to have such access;

(ii) any [person] *individual* with developmental disabilities—

(I) who, [by reason of the mental or physical condition of such person] *by reason of such individual's mental or physical condition*, is unable to authorize the system to have such access;

(II) who does not have a legal guardian, conservator, or other legal representative, or for whom the legal guardian is the State; and

(III) with respect to whom a complaint has been received by the system or with respect to whom as a result of monitoring or other activities there is probable cause to believe that such [person] *individual* has been subject to abuse or neglect; and

(iii) any person with a developmental disability who has a legal guardian, conservator, or other legal representative with respect to whom a complaint has been received by the system or with respect to whom there is probable cause to believe the health or safety of the individual is in serious and immediate jeopardy whenever—

(I) such representatives have been contacted by such system upon receipt of the name and address of such representatives;

(II) such system has offered assistance to such representatives to resolve the situation; and

(III) such representatives have failed or refused to act on behalf of the [person] individual;

(J) hire and maintain sufficient numbers and types of staff, qualified by training and experience, to carry out such system's function except that such State shall not apply hiring freezes, reductions in force, or other policies that negatively affect the provision of staff support to the system, or restrict travel to training and technical assistance activities funded under this Act;

(K) have the authority to educate policymakers; and

(L) provide assurances to the Secretary that funds allotted to the State under this section will be used to supplement and increase the level of funds that would otherwise be made available for the purposes for which Federal funds are provided and not to supplant such non-Federal funds;

[(3) the State must provide assurances to the Secretary that funds allotted to the State under this section will be used to supplement and increase the level of funds that would otherwise be made available for the purposes for which Federal funds are provided and not to supplant such non-Federal funds;]

[(4) the State must provide assurances to the Secretary that such system will be provided with] (3) the State must provide to the system a copy of each annual survey report and plan of corrections for cited deficiencies made pursuant to section [1902(a)(31)(B)] 1902(a)(31) of the Social Security Act with respect to any intermediate care facility for the mentally retarded in the State within 30 days after the completion of each such report or plan; and

[(5) the State must provide assurances satisfactory to the Secretary that the agency implementing the system will not be redesignated unless there is good cause for the redesignation and unless notice has been given of the intention to make such redesignation to persons with developmental disabilities or their representatives.]

(4) the agency implementing the system will not be redesignated unless there is good cause for the redesignation and unless—

(A) notice has been given of the intention to make such redesignation to the agency that is serving as the system including the good cause for such redesignation and the agency has been given an opportunity to respond to the assertion that good cause has been shown;

(B) timely notice and opportunity for public comment in an accessible format has been given to individuals with developmental disabilities or their representatives; and

(C) the system has the opportunity to appeal to the Secretary that the redesignation was not for good cause.

(b) *AMERICAN INDIAN CONSORTIUM.*—Upon application to the Secretary, an American Indian consortium, as defined in section 102, established to provide protection and advocacy services under this part, shall receive funding pursuant to subsection (c)(5). Such consortium shall coordinate activities with existing systems.

[(b)(1) To]

[(b)] (c) *ALLOTMENTS.*—

(1) *IN GENERAL.*—To assist States in meeting the requirements of subsection (a), the Secretary shall allot to the States the amounts appropriated under section 143. Allotments and reallotments of such sums shall be made on the same basis as the allotments and reallotments are made under the first sentence of subsection (a)(1) and subsection (d) of section 125, except that in any case in which—

[(A) the total amount appropriated under section 143 for a fiscal year is at least \$20,000,000—

[(i) the allotment of each of American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands for such fiscal year shall not be less than \$107,000; and

[(ii) the allotment to each of the several States, Puerto Rico, and the District of Columbia for such fiscal year shall not be less than \$200,000; or.]

(A) the total amount appropriated under section 143 for a fiscal year is at least \$20,000,000—

(i) the allotment of each of American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau (until the Compact of Free Association with Palau takes effect) for such fiscal year may not be less than the greater of—

(I) \$107,000; or

(II) the greater of the allotment received by such State for fiscal year 1992, or the allotment received by such State for fiscal year 1993, under this section (determined without regard to subsection (d)); and

(ii) the allotment of any State not described in clause (i) for such fiscal year may not be less than the greater of—

(I) \$200,000; or

(II) the greater of the allotments received by such State for fiscal year 1992, or the allotment received by such State for fiscal year 1993, under this section (determined without regard to subsection (d)).

[(B) the total amount appropriated under section 143 for a fiscal year is less than \$20,000,000, the allotment to each State (other than Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands) shall not be less than \$150,000, and the allotment of each of American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the

Trust Territory of the Pacific Islands for such fiscal year shall not be less than \$80,000]

(B) *the total amount appropriated under section 143 for a fiscal year is less than \$20,000,000—*

*(i) the allotment of each of American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau (until the Compact of Free Association with Palau takes effect) for such fiscal year may not be less than the greater of—*

*(I) \$80,000; or*

*(II) the greater of the allotment received by such State for fiscal year 1992, or the allotment received by such State for fiscal year 1993, under this section (determined without regard to subsection (d)); and*

*(ii) the allotment of any State not described in clause (i) for such fiscal year may not be less than the greater of—*

*(I) \$150,000; or*

*(II) the greater of the allotment received by such State for fiscal year 1992, or the allotment received by such State for fiscal year 1993, under this section (determined without regard to subsection (d)).<sup>3</sup>*

(2) [In any case] **INCREASE IN ALLOTMENTS.**—In any case in which the total amount appropriated under section 143 for a fiscal year exceeds the total amount appropriated under such section for the preceding fiscal year by a percentage greater than the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 100(c)(1) of the Rehabilitation Act of 1973, the Secretary shall increase each of the minimum allotments under subparagraphs (A) and (B) of paragraph (1) by an amount which bears the same ratio to the amount of such minimum allotment (including any increases in such minimum allotment under this paragraph for prior fiscal years) as the amount which is equal to the difference between—

(A) the total amount appropriated under section 143 for the fiscal year for which the increase in minimum allotment is being made, minus

(B) the total amount appropriated under section 143 for the immediately preceding fiscal year, bears to the total amount appropriated under section 143 for such preceding fiscal year.

(3) [A State] **MONITORING THE ADMINISTRATION OF THE SYSTEM.**—A State may use not more than 5 percent of any allotment under this subsection for the costs of monitoring the administration of the system required under subsection (a).

(4) [Notwithstanding] **REDUCTION OF ALLOTMENT.**—Notwithstanding paragraph (1), if the aggregate of the amounts of the allotments to be made in accordance with such paragraph for any fiscal year exceeds the total of the amounts appropriated for such allotments under section 143, the



amount of a State's allotment for such fiscal year shall bear the same ratio to the amount otherwise determined under such paragraph as the total of the amounts appropriated for that year under section 143 bears to the aggregate amount required to make an allotment to each of the States in accordance with paragraph (1).

(5) *TECHNICAL ASSISTANCE AND AMERICAN INDIAN CONSORTIUM.*—*In any case in which amounts appropriated under section 143 for a fiscal year exceeds \$24,500,000, the Secretary shall—*

*(A) use not more than 2 percent of the amounts appropriated to provide technical assistance (consistent with requests by such systems for such assistance in the year that appropriations reach \$24,500,000) to eligible systems with respect to activities carried out under this title; and*

*(B) provide grants in accordance with paragraph (1)(A)(i) to American Indian Consortiums to provide protection and advocacy services.*

[(c) Any amount] (d) *UNOBLIGATED FUNDS.*—*Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available to such State for the next fiscal year for the purposes for which such amount was paid.*

[(d) In States] (e) *GOVERNING BOARD.*—*In States in which the system is organized as a private non-profit entity with a multimember governing board, or a public system with a multimember governing board, such governing board shall be selected according to the policies and procedures of the system, except that—*

*(1) the governing board shall be composed of members who broadly represent or are knowledgeable about the needs of the individuals served by the system and include individuals with developmental disabilities who are eligible for services, or have received or are receiving services, or parents, family members, guardians, advocates, or authorized representatives of such individuals;*

\* \* \* \* \*

*(4) in States in which the system is organized as a public system without a multimember governing or advisory board, the system shall establish an advisory council that shall—*

*(A) advise the system on policies and priorities to be carried out in protecting and advocating the rights of individuals with developmental disabilities; and*

*(B) consist of a majority of individuals with developmental disabilities who are eligible for services, or have received or are receiving services, or parents, family members, guardians, advocates, or authorized representatives of such individuals.*

[(e) As used] (f) *RECORDS.*—*As used in this section the term 'records' includes reports prepared or received by any staff of a facility rendering care or treatment, or reports prepared by an agency or staff person charged with investigating reports of incidents of abuse or neglect, injury or death occurring at such facility that describes incidents of abuse, neglect, injury or death occurring at*

such facility and the steps taken to investigate such incidents, and discharge planning records.

[(f) If the] (g) *ACCESS TO RECORDS.* *If the laws of a State prohibit a system from obtaining access to records of [persons] individuals with developmental disabilities the provisions of subparagraph (A) of paragraph (2) of subsection (a) shall not apply to such system before—*

\* \* \* \* \*

[g] (h) *LEGAL ACTION.—*

[(g)(1) Nothing] (1) *IN GENERAL.—**Nothing in this Act shall preclude the systems described under this section from bringing a suit on behalf of [persons] individuals with developmental disabilities against a State, or agencies or instrumentalities of a State.*

[(2) Amounts] (2) *USE OF AMOUNTS FROM JUDGMENT.—**Amounts received pursuant to paragraph (1) through court judgments and used by the system are limited to furthering the purpose of this part and shall not be used to augment payments to legal contractors or to award personal bonuses.*

[(h) Notwithstanding] (i) *PAYMENT TO SYSTEMS.—**Notwithstanding any other provision of law, the Secretary shall pay directly to any system which complies with the provisions of this section the amount of such system's allotment under this section, unless the system delegates otherwise.*

(j) *DISCLOSURE OF INFORMATION.—**For purposes of any periodic audit, report, or evaluation required under this Act, the Secretary shall not require a program to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under such program.*

(k) *PUBLIC NOTICE OF FEDERAL ONSITE REVIEW.—**The Secretary shall provide advance public notice of any Federal programmatic and administrative review and solicit public comment on the system funded under this part through such notice. The findings of the public comment solicitation notice shall be included in the onsite visit report.*

#### [AUTHORIZATION OF APPROPRIATIONS]

[SEC. 143.] \* \* \*

SEC. 143. *AUTHORIZATION OF APPROPRIATIONS.—*For allotments under section 142, there are authorized to be appropriated [\$24,200,000 for fiscal year 1991] \$29,000,000 for fiscal year 1994, and such sums as may be necessary for each of the [fiscal years 1992 and 1993] fiscal years 1995 and 1996.

#### [PART D—UNIVERSITY AFFILIATED PROGRAMS]

##### PART D—UNIVERSITY AFFILIATED PROGRAMS

##### [PURPOSE]

[SEC. 151. The purpose of this part is to provide for grants to university affiliated programs to assist in the provision of interdisciplinary training, the demonstration of exemplary services and technical assistance, and the dissemination of information which will increase and support the independence, productivity, and inte-

gration into the community of persons with developmental disabilities.]

**SEC. 151. PURPOSE AND SCOPE OF ACTIVITIES.**

*The purpose of this part is to provide for grants to university affiliated programs that are interdisciplinary programs operated by universities, or by public or nonprofit entities associated with a college or university, to provide a leadership role in the promotion of independence, productivity, and integration and inclusion into the community of individuals with developmental disabilities through the provision of the following activities:*

(1) *Interdisciplinary preservice preparation of students and fellows, including the preparation of leadership personnel.*

(2) *Community service activities that shall include community training and technical assistance for or with individuals with developmental disabilities, family members of individuals with developmental disabilities, professionals, paraprofessionals, students, and volunteers. Such activities may include state-of-the-art direct services including family support, individual support, personal assistance services, educational, vocational, clinical, health, prevention, or other direct services.*

(3) *Dissemination of information and research findings, which may include the empirical validation of activities relevant to the purposes described in paragraphs (1) and (2) and contributions to the development of new knowledge in the field of developmental disabilities.*

**[GRANT AUTHORITY]**

**[SEC. 152.] \* \* \***

**SEC. 152. GRANT AUTHORITY.**

(a) **[From appropriations] ADMINISTRATION AND OPERATION.**—*From appropriations under section 154(a), the Secretary shall make grants to university affiliated programs to assist in the administration and operation of the activities described in section [102(18)] 151. Grants may be awarded for a period not to exceed 5 years.*

**[(b)(1)(A)]** *From amounts appropriated under section 154(b), the Secretary shall make grants of to university affiliated programs receiving grants under subsection (a) to support training projects to train personnel to address the needs of persons with developmental disabilities in areas of emerging national significance, particularly projects to train personnel in the areas of early intervention programs (as described in paragraph (2)), programs for elderly persons with developmental disabilities (as described in paragraph (3)), community-based service programs (as described in paragraph (4)), positive behavior management programs (as described in paragraph (5)), assistive technology programs (as described in paragraph (6)) and programs in other areas of national significance as determined by the university affiliated program, in consultation with the State Planning Council (as described in paragraph (7)).*

**[(B)(i)]** *Grants awarded under this subsection shall be in the amount of \$90,000.*

**[(ii)]** *The Secretary may waive the provisions of clause (i) and award grants under this subsection in an amount which does not*

exceed \$150,000, if the Secretary determines that such grants are of such sufficient scope and quality so as to address issues of national significance as identified in the report conducted pursuant to section 122(f).

[(iii) If an appropriately convened peer review panel determines that applications submitted by university affiliated programs for training programs under this part in any fiscal year insufficiently address quality criteria established under subparagraph (D), the Secretary shall, pursuant to regulations issued under this Act, award any amounts available for carrying out the purposes of this section to other university affiliated programs which the Secretary determines will use the funds in accordance with subsection (b)(1)(B)(ii). The Secretary may make such awards for a period not to exceed 3 years to applicants whose applications are determined to be of minimal quality by peer review, notwithstanding the provisions of (b)(1)(B)(i).

[(C) Grants under this section shall be awarded on a competitive basis. Grants awarded under this section shall be awarded for a period of 3 years.

[(D) The Secretary shall require appropriate technical and qualitative peer review of applications for assistance under this subsection by peer review groups as established under section 153(e)(4) using the following criteria:

[(i) The university affiliated program shall present evidence that core training assisted by funds awarded under this section is—

[(I) competency and value based;

[(II) designed to facilitate independence, productivity and integration for persons with developmental disabilities; and

[(III) evaluated utilizing state of the art evaluation techniques in the programmatic areas selected.

[(ii) Core training shall—

[(I) represent state-of-the-art techniques in areas of critical shortage of personnel which are identified through consultation with the citizens advisory group designated pursuant to subsection (f) and the State Planning Council;

[(II) be conducted in consultation with the citizens advisory group designated under subsection (f) and the State developmental disabilities planning council;

[(III) be integrated into the appropriate university affiliated program and university curriculum;

[(IV) be integrated with relevant State agencies in order to achieve an impact on statewide personnel and service needs;

[(V) to the extent practicable, be conducted in environments where services are actually delivered; and

[(VI) to the extent possible, be interdisciplinary in nature.

[(E)(i) Grants awarded under this subsection shall not be used for administrative expenses.

[(ii) Grants awarded under this subsection shall not be used to carry out the provisions of subsection (a).



[(F) Grants under this subsection may be used by university affiliated programs to (i) assist in paying the costs of courses of training or study for personnel to provide services for persons with developmental disabilities and (ii) establish fellowships or traineeships providing such stipends and allowances as may be determined by the Secretary.

[(2) Grants under this subsection for training projects with respect to early intervention programs shall be for the purpose of assisting university affiliated programs in providing training to allied health personnel and other personnel who provide, or who will provide, interdisciplinary intervention to infants, toddlers, and preschool age children with developmental disabilities. Such training projects shall included instruction on methods of working and collaborating with professionals and families of persons with developmental disabilities.

[(3) Grants under this subsection for training projects with respect to programs for elderly persons with developmental disabilities shall be for the purpose of supporting the planning, design, and implementation of coordinated interdisciplinary training programs between existing aging or gerontological programs and university affiliated programs in order to prepare professional staff to provide services for elderly persons with developmental disabilities.

[(4) Grants under this subsection for training projects with respect to community-based programs shall be for the purpose of providing interdisciplinary training to personnel who will provide direct supports and services for persons with developmental disabilities, including paraprofessionals who are employed or are preparing to be employed in community-based day programs or residential programs for persons with developmental disabilities. The Secretary shall ensure that all grants under this paragraph are made only to university affiliated programs that involve local community-level direct care programs and paraprofessional training programs in the preparation of the application for such grant and shall assure that any training under the university affiliated program will be coordinated with local programs.

[(5) Grants awarded under this subsection for training projects with respect to positive behavior management intervention programs shall be for the purpose of assisting university affiliated programs in providing training to families, foster parents, paraprofessionals, other appropriate community-based staff, and institutional staff, including health care staff and behavioral specialists, who provide or will provide, positive behavior management interventions for persons with developmental disabilities. Such training interventions shall include—

[(A) ethical principles and standards;

[(B) appropriate assessment of the origin of behavior problems including antecedent behaviors, the environment, medical problems (including seizure disorders), other neurological problems, or medication side effects;

[(C) the development of a positive behavior management plan;

[(D) the use of positive reinforcements appropriate to the developmental level of the person;

[(E) the use of emergency procedures; and

[(F) the administration of appropriate psychotropic drugs including drugs which the person may be taking for other conditions such as seizure disorders.

[(6) Grants under this subsection for training projects with respect to assistive technology programs shall be for the purpose of assisting university affiliated programs in providing training to allied health personnel and other personnel who provide or will provide, assistive technology services to persons with developmental disabilities. Such projects may provide training and technical assistance to improve the quality of service delivery in community-based, nonprofit consumer and provider service programs for persons with developmental disabilities and may include stipends and tuition as assistance from such organizations. Such projects shall be coordinated with State technology coordinating councils wherever such councils exist.

[(7) Grants under this subsection for training projects with respect to programs in other areas of national significance shall be for the purpose of training personnel in an area of special concern to the university affiliated program, and shall be developed in consultation with the State Planning Council.]

**(b) TRAINING PROJECTS.—**

(1) *IN GENERAL.*—From amounts appropriated under section 156(a), the Secretary shall make grants to university affiliated programs receiving grants under subsection (a) to support training projects to train personnel to address the needs of individuals with developmental disabilities in areas of emerging national significance, as described in paragraph (3). Grants awarded under this subsection shall be awarded on a competitive basis and may be awarded for a period not to exceed 5 years.

(2) *ELIGIBILITY LIMITATIONS.*—A university affiliated program shall not be eligible to receive funds for training projects under this subsection unless—

(A) such program has operated for at least 1 year; or

(B) the Secretary determines that such program has demonstrated the capacity to develop an effective training project during the first year such program is operated.

(3) *AREAS OF FOCUS.*—Training projects under this subsection shall train personnel to address the needs of individuals with developmental disabilities in the areas of emerging national significance described in subparagraphs (A) through (G).

(A) *EARLY INTERVENTION.*—Grants under this subsection for training projects with respect to early intervention services shall be for the purpose of assisting university affiliated programs in providing training to family members of children with developmental disabilities and personnel from all disciplines involved with interdisciplinary intervention to infants, toddlers, and preschool age children with developmental disabilities. Such training projects shall include instruction on family-centered, community-based, coordinated care for infants, toddlers, and preschool age children with developmental disabilities and their families.

(B) AGING.—Grants under this subsection for training projects with respect to aging and developmental disabilities shall be for the purpose of supporting the planning, design, and implementation of coordinated interdisciplinary training programs between existing aging or gerontological programs and university affiliated programs in order to prepare professional staff to provide services for aging individuals with developmental disabilities and their families.

(C) COMMUNITY SERVICES.—Grants under this subsection for training projects with respect to community services shall be for the purpose of providing training that enhances direct supports and services for individuals with developmental disabilities, including training to community members, families, individuals with developmental disabilities, and community-based direct service providers. The Secretary shall ensure that all grants under this subparagraph are made only to university affiliated programs that involve community-level direct support services in the preparation of the application for such grant and that assure that any training under the university affiliated program will be coordinated with local community services and support systems and with State, local, and regional governmental or private agencies responsible for the planning or delivery of services to individuals with developmental disabilities.

(D) POSITIVE BEHAVIORAL SUPPORTS.—Grants awarded under this subsection for training projects with respect to positive behavioral supports shall be for the purpose of assisting university affiliated programs in providing training to family members of individuals with developmental disabilities and personnel in methods of developing individual supports that maximize opportunities for independence, productivity, and integration and inclusion into the community for individuals with developmental disabilities and severe behavior problems. Such training projects shall provide training to—

- (i) address ethical and legal principles and standards, including the role of personal values in designing assessments and interventions;

- (ii) address appropriate assessment approaches that examine the range of factors that contribute to problem behavior;

- (iii) address the development of a comprehensive plan that considers the needs and preferences of an individual with a developmental disability;

- (iv) address the competence in the types of skills training, environmental modification, and incentive procedures that encourage alternative behaviors;

- (v) familiarize training participants with crisis intervention approaches and the separate role of such approaches as short-term emergency procedures;

(vi) familiarize training participants with medical interventions and how to evaluate the effect of such interventions on behavior; and

(vii) address techniques for evaluating the outcomes of interventions.

(E) **ASSISTIVE TECHNOLOGY SERVICES.**—Grants under this subsection for training projects with respect to assistive technology services shall be for the purpose of assisting university affiliated programs in providing training to personnel who provide, or will provide, assistive technology services and devices to individuals with developmental disabilities and their families. Such projects may provide training and technical assistance to improve access to assistive technology services for individuals with developmental disabilities and may include stipends and tuition assistance for training project participants. Such projects shall be coordinated with State technology coordinating councils wherever such councils exist.

(F) **AMERICANS WITH DISABILITIES ACT.**—Grants under this subsection for training projects with respect to the provisions of the Americans with Disabilities Act of 1990 shall be for the purpose of assisting university affiliated programs in providing training to personnel who provide, or will provide, services to individuals with developmental disabilities, and to others concerned with individuals with developmental disabilities.

(G) **OTHER AREAS.**—Grants under this subsection for training projects with respect to programs in other areas of national significance shall be for the purpose of training personnel in an area of special concern to the university affiliated program, and shall be developed in consultation with the State Developmental Disabilities Council.

(4) **COURSES, TRAINEESHIPS AND FELLOWSHIPS.**—Grants under this subsection may be used by university affiliated programs to—

(A) assist in paying the costs of courses of training or study for personnel to provide services for individuals with developmental disabilities and their families; and

(B) establish fellowships or traineeships providing such stipends and allowances as may be determined by the Secretary.

(5) **PROHIBITED ACTIVITIES.**—Grants awarded under this subsection shall not be used for administrative expenses for the university affiliated program under subsection (a).

(6) **CRITERIA.**—Grants awarded under this subsection shall meet the criteria described in subparagraphs (A) and (B).

(A) **APPLICATION.**—An application that is submitted for a grant under this subsection shall present evidence that training projects assisted by funds awarded under this section are—

(i) competency and value based;

(ii) designed to facilitate independence, productivity, and integration and inclusion for individuals with developmental disabilities; and



(iii) *evaluated utilizing state-of-the-art evaluation techniques in the programmatic areas selected.*

(B) **GENERAL PROJECT REQUIREMENTS.**—*Training projects under this subsection shall—*

(i) *represent state-of-the-art techniques in areas of critical shortage of personnel that are identified through consultation with the consumer advisory committee described in section 153(d) and the State Developmental Disabilities Council;*

(ii) *be conducted in consultation with the consumer advisory committee described in section 153(d) and the State Developmental Disabilities Council;*

(iii) *be integrated into the appropriate university affiliated program and university curriculum;*

(iv) *be integrated with relevant State agencies in order to achieve an impact on statewide personnel and service needs;*

(v) *to the extent practical, be conducted in environments where services are actually delivered;*

(vi) *to the extent possible, be interdisciplinary in nature; and*

(vii) *to the extent possible, address the unique needs of individuals with developmental disabilities from ethnic, cultural, and linguistic minority backgrounds.*

(c) [From amounts appropriated under section 154(b)] **SUPPLEMENTAL AWARDS.**—*From amounts appropriated under section 156(a), the Secretary may make grants to university affiliated programs receiving grants under subsection (a) to support one or more of the following activities:*

(1) The provision of [service-related training to persons] *interdisciplinary training, community training and technical assistance, community services, or dissemination of information to individuals, with developmental disabilities, family members of such [persons] individuals, professionals, volunteers, or other personnel to enable such persons, family members, professionals, volunteers, or personnel to provide services to increase or maintain the independence, productivity, and [integration into the community of persons with developmental disabilities.] integration and inclusion into the community of individuals with developmental disabilities and not otherwise specified in subsection (b).*

(2) The conduct of an applied research program designed to produce more efficient and effective methods for [(A) the] *the* delivery of services to [persons] *individuals* with developmental disabilities, and [(B) the] *the* training of professionals, paraprofessionals, and [parents] *family members* who provide such services.

[(d) From amounts appropriated under section 154(a) the Secretary may make grants to pay part of the costs of establishing satellite centers and may make grants to satellite centers to pay part of their administration and operation costs. A satellite center which receives a grant under this section may engage in the activities described in subparagraph (A), (B), or (C) of section 102(18) and may compete for grants under subsections (b) and (c).]

[(e) From amounts appropriated under section 154(a)] (D) **FEASIBILITY STUDIES.**—*From amounts appropriated under section*

156(a) the Secretary may make a grant to a university or a public or nonprofit entity which is associated with, or is an integral part of, a college or university, to study the feasibility of establishing a university affiliated program [or a satellite center]. Such study shall include an assessment of the needs of the area in which the university is located for such a program or center. The amount of a grant under this subsection may not exceed \$35,000 for any fiscal year. A grant under this subsection may only be made in a State in which there is no university affiliated program [or satellite center].

[(f) The Secretary shall only make grants under this section to university affiliated programs which establish a consumer advisory committee comprised of consumers, family members, representatives of State protection and advocacy systems, developmental disabilities councils (including State service agency directors), local agencies, and private nonprofit groups concerned with providing services for persons with developmental disabilities.

[(g) A university affiliated program shall not be eligible to receive funds for training projects pursuant to this section unless—

[(1) such program has operated for at least 1 year; or

[(2) the Secretary determines that such project has demonstrated the capacity to develop an effective training program during the first year such program is operated.]

#### [APPLICATIONS]

#### [SEC. 153.]

#### SEC. 153. [APPLICATIONS.]

(a) *IN GENERAL.*—No grants may be made under section 152(a) unless an application therefor is submitted to, and approved by, the Secretary. Such an application shall be submitted in such form and manner, and contain such information, as the Secretary may require.

[(a) Not later than six] (b) *STANDARDS.*—Not later than 12 months after the date of the enactment of the Developmental Disabilities [Act of 1984]. *Assistance and Bill of Rights Act Amendments of 1993* the Secretary shall establish by regulation standards for university affiliated programs. Such standards shall reflect the special needs of all [persons] with developmental disabilities who are of various ages, and shall include performance standards relating to each of the activities described in [section 102(18)] *section 151.*

[(b) No grants may be made under section 152(a) unless an application therefor is submitted to, and approved by, the Secretary. Such an application] (c) *ASSURANCES.*—The application under subsection (a) shall be submitted in such form and manner, and contain such information, as the Secretary may require. Such an application shall be approved by the Secretary only if the application contains or is supported by reasonable assurances that—

(1) the making of the [grant will (A) not result in any decrease in the use of State, local, and other non-Federal funds for services for persons with developmental disabilities and for training of persons to provide such services, which funds would (except for such grant) be made available to the applicant, and

(B) be used to supplement and, to the extent practicable, increase the level of such funds:] *grant will—*

(A) *not result in any decrease in the use of State, local, and other non-Federal funds for services for individuals with developmental disabilities and for training of individuals to provide such services, which funds would (except for such grant) be made available to the applicant; and*

(B) *be used to supplement and, to the extent practicable, increase the level of such funds;*

(2)(A) the applicants program is in full compliance with the standards established under [subsection (a)] *subsection (b) or*

(B)(i) the applicant will make substantial progress toward bringing the program into compliance with such standards, and (ii) the program will, not later than three years after the date of approval of the initial application or the date standards are promulgated under subsection (a), whichever is later, fully comply with such standards:

(3) the human rights of all [persons] with developmental disabilities (especially those [persons] *individuals* without familial protection) who are receiving [treatment, services, or habilitation] *services* under programs assisted under this part will be protected consistent with section 110 (relating to rights of [the developmentally disabled]); *individuals with developmental disabilities.*

(4) the activities conducted under this part are consistent with, and to the extent feasible, complement and further, the objectives contained in the State plan required under section 122; and

(5) before the submission of such application, an opportunity for comment has been provided to the general public and the State [Planning] *Developmental Disabilities* Council of the State in which the program will be conducted [or the satellite center is or will be located].

[(c) The Secretary shall establish such a process for the review of applications for grants under section 152(a) as will ensure, to the maximum extent feasible, that each Federal agency that provides funds for the direct support of the applicant's program reviews the application.

[(d)(1) If the total amount appropriated under section 154(a) for a fiscal year is at least \$8,500,000, the amount of any grant under section 152(a) to a university affiliated program shall not be less than \$200,000 for such fiscal year and the amount of any grant under section 152(c) to a satellite center shall not be less than \$150,000 for such fiscal year.

[(2) If the total amount appropriated under section 154(a) is less than \$8,500,000, the amount of any grant under section 152(a) to a university affiliated program shall not be less than \$150,000 for such fiscal year and the amount of any grant under section 152(c) to a satellite center shall not be less than \$150,000 for such fiscal year.

[(3)(A) For purposes of making grants under section 152(a), the Secretary shall consider applications for grants for four university affiliated programs or satellite centers for each of the fiscal years 1991, 1992, and 1993 which are in addition to the total number of

university affiliated programs and satellite centers receiving grants under such section for the preceding fiscal year. The Secretary shall solicit and may approve applications pursuant to this paragraph which encompass multiple universities within the same State university system or two or more universities which are otherwise unrelated.

[(B) Such programs and centers shall, to the extent feasible, be geographically distributed for the purpose of serving States that are unserved by university affiliated programs and satellite centers under this part on the date of enactment of the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1990. If an insufficient number of quality applications, as determined by a peer review process, from such unserved States have not been received in any fiscal year, the Secretary may consider applications for such fiscal year from States that are served by a university affiliated program or satellite center which is not able to serve particular geographic regions of the State, only if such applications demonstrate a need for additional training within the State and an exemplary service capacity to serve individuals within the State.

[(C) The Secretary may not deny an application for a university affiliated program or satellite center solely because of the size of the population proposed to be served by the program or center, if such application proposes to serve the population of an entire State.]

(d) *CONSUMER ADVISORY COMMITTEE.*—*The Secretary shall only make grants under section 152(a) to university affiliated programs that establish a consumer advisory committee comprised of individuals with developmental disabilities, family members of individuals with developmental disabilities, representatives of State protection and advocacy systems, State developmental disabilities councils (including State service agency directors), local agencies, and private nonprofit groups concerned with providing services for individuals with developmental disabilities, which may include representatives from parent training and information centers.*

(e) *FEDERAL SHARE.*—

(1) *IN GENERAL.*—*The Federal share of any project to be provided through grants under this part may not exceed 75 percent of the necessary cost of such project, as determined by the Secretary, except that if the project activities or products target individuals with developmental disabilities who live in an urban or rural poverty area, the Federal share may not exceed 90 percent of the project's necessary costs as so determined by the Secretary.*

(2) *PROJECT EXPENDITURES.*—*For the purpose of determining the Federal share with respect to any project, expenditures on that project by a political subdivision of the State or by a public or private entity shall, subject to such limitations and conditions as the Secretary may by regulation prescribe, be considered to be expenditures made by a university affiliated program under this part.*

[(e)(1) The Secretary] (f) *PEER REVIEW.*—(1) *In General.*—*The Secretary shall require appropriate technical and qualitative peer review of applications for assistance under this part by peer review groups established under paragraph (4), including on-site visits or*



inspections as necessary. [Such peer review shall be coordinated, as appropriate, with the peer review described in section 152(b)(1)(D).]

[(2) Regulations] (2) *REGULATIONS.*—*Regulations* promulgated under paragraph (1) shall provide that the review of the application required by such paragraph shall be conducted by groups established under paragraph (4) that are composed of non-Federal individuals who, by [experience or training] *experience and training*, are highly qualified to assess the comparative quality of applications for assistance.

[(3)(A) The Secretary may approve an application under this part only if such application has been recommended by a peer review group that has conducted the peer review required under paragraph (1).

[(B) This paragraph shall apply to the approval of grant applications received for fiscal year 1990 and succeeding fiscal years.]

(3) *APPROVAL.*—

(A) *IN GENERAL.*—*The Secretary may approve an application under this part only if such application has been recommended by a peer review group that has conducted the peer review required under paragraph (1).*

(B) *APPLICABILITY.*—*This paragraph shall apply to the approval of grant applications received for fiscal year 1990 and succeeding fiscal years.;*

[(4) The Secretary] (4) *ESTABLISHMENT OF PEER REVIEW GROUPS.*—*The Secretary acting through the Commissioner of the Administration on Developmental Disabilities, may, notwithstanding—*

(A) the provisions of title 5, United States Code, concerning appointments to the competitive service;

(B) the provisions of chapter 51, and subchapter III of chapter 53 of title 5, United States Code, concerning classification and General Schedule pay rates:

establish such peer review groups as are necessary to carry out this subsection, and appoint and set the rates of pay for members of such groups.

[(5) The Secretary] (5) *WAIVERS OF APPROVAL.*—*The Secretary may waive the provisions of paragraph (3) concerning approval of an application if the Secretary determines that exceptional circumstances warrant such a waiver.*

(g) *REVIEW BY OTHER FEDERAL AGENCIES.*—*The Secretary shall establish such a process for the review of applications for grants under section 152(a) as will ensure, to the maximum extent feasible, that each Federal agency that provides funds for the direct support of the applicant's program reviews the application.*

[SEC. 154. AUTHORIZATION OF APPROPRIATIONS.

[(a) For the purpose of grants under subsections (a), (d), and 9e) of section 152, there are authorized to be appropriated \$11,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993.

[(b) For the purpose of grants under section 152(b) and 152(c), there are authorized to be appropriated \$5,500,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993.

[(c) The Secretary may use funds appropriated under subsection (a) for the purposes described in subsection (b).]

**SEC. 154. PRIORITY FOR GRANT AWARDS.**

(a) *IN GENERAL.*—In awarding and distributing grant funds under this part, the Secretary, subject to the availability of appropriations, shall award and distribute grant funds in accordance with the following order of priorities:

(1) *EXISTING STATE UNIVERSITY AFFILIATED PROGRAMS.*—First priority shall be given, with respect to the provision of grant awards under section 152(a) in the amount of \$200,000, to an existing State university affiliated program that meets the requirements under section 153.

(2) *UNSERVED STATES.*—Second priority shall be given, with respect to the provision of grant awards under section 152(a) in the amount of \$200,000, to a university or public or nonprofit entity associated with a college or university that desires to establish a university affiliated program in a State that is unserved by a university affiliated program as of the date of enactment of the Developmental Assistance and Bill of Rights Act Amendments of 1993.

(3) *TRAINING PROJECTS IN ALL UNIVERSITY AFFILIATED PROGRAMS.*—Third priority shall be given, with respect to the provision of grant awards, to each university affiliated program that receives funding under section 152(a) and that meets the eligibility limitations under section 152(b) to the establishment of training projects under section 152(b) in the amount of \$90,000 in each such program.

(4) *INCREASED FUNDING FOR TRAINING PROJECTS.*—Fourth priority shall be given, with respect to the provision of grant awards, to the provision of an increase in the amount of a training project grant award under section 152(b) to \$100,000.

(5) *INCREASED FUNDING FOR UNIVERSITY AFFILIATED PROGRAMS.*—Fifth priority shall be given, with respect to the provision of grant awards, to the provision of an increase in the amount of a university affiliated program grant award under section 152(a) to \$250,000.

(6) *ADDITIONAL TRAINING.*—Sixth priority shall be given, with respect to the provision of grant awards, to an existing university affiliated program in a State that is served by such program under section 152(a) to provide additional training under subsection (b) or (c) of section 152 within such State or other geographic regions, or to a university or public or nonprofit entity associated with a college or university that desires to establish another university affiliated program within such State under section 152(a). All applications submitted to the Secretary for such grant awards shall document plans for coordinating activities with an existing university affiliated program in the State (if applicable) and in consultation with the State Developmental Disabilities Council.

(b) *ADDITIONAL PROGRAMS.*—For purposes of making grants under subsection (a)(6), the Secretary shall consider applications for grants for university affiliated programs—

(1) for States that are currently underserved by a university affiliated program; and

(2) that are in addition to the total number of university affiliated programs receiving grants under this subsection for the preceding fiscal year.

(c) **SINGLE APPLICATION.**—When every State is served by a university affiliated program under section 152(a) in the amount of \$200,000 and every such program has been awarded a training grant under section 152(b) in the amount of \$90,000, the Secretary may accept applications under such sections in a single application.

#### **SEC. 155. DEFINITION.**

For purposes of this part, the term 'State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

#### **SEC. 156. AUTHORIZATION OF APPROPRIATIONS.**

(a) **IN GENERAL.**—For the purpose of making grants under subsections (a), (b), (c), and (d) of section 152, there are authorized to be appropriated \$21,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(b) **LIMITATION.**—With respect to peer review or other activities directly related to peer review, the Secretary may not use—

(1) for fiscal year 1994, more than \$300,000 of the funds made available under subsection (a) for such review or such other activities;

(2) for any succeeding fiscal year, more than the amount of the funds made available under paragraph (1) adjusted to take into account the increase in the Consumer Price Index for such fiscal year for such review or such other activities.

### **[PART E—PROJECTS OF NATIONAL SIGNIFICANCE**

#### **[PURPOSE**

[SEC. 161. The purpose of this part is to provide for grants and contracts for projects of national significance to increase and support the independence, productivity, and integration into the community of persons with developmental disabilities, and to support the development of national and State policy which enhances the independence, productivity, and integration of persons with developmental disabilities through data collection and analysis, technical assistance to program components, technical assistance for the development of information and referral systems, educating policymakers, Federal interagency initiatives, and the enhancement of minority participation in public and private sector initiatives in developmental disabilities.]

### **PART E—PROJECTS OF NATIONAL SIGNIFICANCE**

#### **SEC. 161. PURPOSE.**

The purpose of this part is to provide for grants and contracts for projects of national significance that support the development of national and State policy to enhance the independence, productivity, and integration and inclusion of individuals with developmental disabilities through—

(1) data collection and analysis;

(2) *technical assistance to enhance the quality of State Developmental Disabilities Councils, protection and advocacy systems, and university affiliated programs; and*

(3) *other projects of sufficient size and scope that hold promise to expand or improve opportunities for individuals with developmental disabilities, including—*

(A) *technical assistance for the development of information and referral systems;*

(B) *educating policymakers;*

(C) *Federal interagency initiatives;*

(D) *the enhancement of minority participation in public and private sector initiatives in developmental disabilities; and*

(E) *special pilots and evaluation studies to explore the expansion of programs under part B to individuals with severe disabilities other than developmental disabilities.*

#### [GRANT AUTHORITY

#### [SEC. 162.]

#### SEC. 162. GRANT AUTHORITY.

[(a) The Secretary may make grants to and enter into contracts with public or nonprofit private entities for—

[(1) projects of national significance relating to persons with developmental disabilities, including projects to educate policymakers, develop an ongoing data collection system, determine the feasibility and desirability of developing a nationwide information and referral system, improve supportive living and quality of life opportunities which enhance recreation, leisure and fitness, and pursue Federal interagency initiatives, and other projects of sufficient size and scope and which hold promise of expanding or otherwise improving opportunities for persons with developmental disabilities (especially those who are multihandicapped or disadvantaged, including minority groups, Native Americans, Native Hawaiians, and other underserved groups); and

[(2) technical assistance and demonstration projects (including research, training, and evaluation in connection with such projects) which expand or improve the functions of the State Planning Council, the functions performed by university affiliated programs and satellite centers under part D, and protection and advocacy system described in section 142.

Projects for the evaluation and assessment of the quality of services provided persons with developmental disabilities which meet the requirements of subparagraphs (A), (B), and (C) of paragraph (1) may be included as projects for which grants are authorized under such paragraph.]

(A) *IN GENERAL.—The Secretary—*

(1) *shall make grants to and enter into contracts with public or nonprofit private entities for projects of national significance relating to individuals with developmental disabilities to—*

(A) *support ongoing data collection on expenditures, residential services and employment, and develop an ongoing data collection system, including data collection on the ac-*



*complishments of State Developmental Disabilities Councils, protection and advocacy systems, and university affiliated programs; and*

*(B) provide technical assistance (including research, training, and evaluation) that expands or improves the effectiveness of State Developmental Disabilities Councils under part B, protection and advocacy systems under part C, and university affiliated programs under part D, including the evaluation and assessment of the quality of services provided to individuals with developmental disabilities and other activities performed by programs under parts B, C, and D; and*

*(2) may make grants to and enter into contracts with public or nonprofit private entities for projects of national significance relating to individuals with developmental disabilities to conduct other nationally significant initiatives of sufficient size and scope that hold promise of expanding or otherwise improving opportunities for individuals with developmental disabilities, including—*

*(A) conducting research and providing technical assistance to assist States to develop statewide, comprehensive information and referral and service coordination systems for individuals with developmental disabilities and their families and improve supportive living and quality of life opportunities that enhance recreation, leisure, and fitness;*

*(B) educating policymakers, including the training of self-advocates and family members of individuals with developmental disabilities;*

*(C) pursuing Federal interagency initiatives that enhance the ability of Federal agencies to address the needs of individuals with developmental disabilities and their families; and*

*(D) expanding or otherwise improving opportunities for individuals with developmental disabilities who are traditionally unserved or underserved (including individuals of ethnic and racial minority groups, and individuals from underserved geographical areas) including projects to encourage members of such groups to participate in the Developmental Disabilities Programs authorized under parts B, C, and D, and increase the involvement of students and professionals of such groups in the provision of services to, supports to, and advocacy for, individuals with developmental disabilities.*

**[(b) No grant may be made under subsection (a) unless an application therefor has been submitted to, and approved by, the Secretary. Such application shall be in such form, submitted in such manner, and contain such information as the Secretary shall by regulation prescribe. The Secretary may not approve such an application unless each State in which the applicant's project will be conducted has a State plan approved under section 122, and unless the application provides assurances that the human rights of all persons with developmental disabilities (especially those persons without familial protection) who are receiving treatment, services, or habilitation under projects assisted under this part will be pro-**

tected consistent with section 110 (relating to the rights of the developmentally disabled). The Secretary shall provide to the State Planning Council in such State an opportunity to review the application for such project and to submit its comments on the application.]

**(b) INVESTIGATIONS.—**

(1) *IN GENERAL.*—Not later than October 1, 1993, there shall be a special initiative to support grants to investigate the expansion of part B activities to individuals with severe disabilities other than developmental disabilities. Such investigations shall be implemented through the following activities:

(A) A national study of State Developmental Disabilities Councils that are currently mandated under State law or Executive order to focus on individuals with disabilities other than developmental disabilities. Such study shall be completed not later than June 30, 1995.

(B) Pilot initiatives by not more than five additional State Developmental Disabilities Councils, in consultation with and with the support of the protection and advocacy system and the university affiliated program in such State, to study the implications of such expansion in States in which such Councils are located and to delineate barriers, opportunities, and critical issues. Such initiatives shall be completed not later than January 1996.

(C) A national study of the process and outcomes of the pilot studies conducted under subparagraph (B). Such study shall be completed not later than May 30, 1996.

(2) *APPLICATION.*—No grant may be made under this subsection unless an applicant submits to the Secretary an application, and meets the additional application requirements, under subsection (c).

**(c) APPLICATION AND OTHER GRANT REQUIREMENTS.**—No grant may be made under subsection (a) unless—

(1) an application has been submitted to the Secretary in such form, in such manner, and containing such information as the Secretary shall by regulation prescribe and such application has been approved by the Secretary;

(2) each State in which the applicant's project will be conducted has a State plan approved under section 122;

(3) the application provides assurances that the human rights of all individuals with developmental disabilities (especially those individuals without familial protection) who are receiving services under projects assisted under this part will be protected consistent with section 110 (relating to the rights of individuals with developmental disabilities); and

(4) the Secretary provides to the State Developmental Disabilities Council in such State an opportunity to review the application for such project and to submit its comments on the application.

**[(c) Not later]** (d) *PRIORITIES FOR GRANTS.*—Not later than January 1 of each year, the Secretary shall publish in the Federal Register proposed priorities for grants and contracts under this part and shall allow a period of 60 days for public comments and suggestions concerning such proposed priorities. After analyzing and

considering such comments, the Secretary shall publish final priorities for such grants and contracts in the Federal Register.

[(d) Payments under] (e) **GRANT PAYMENTS.**—*Payments under grants under subsection (a) may be made in advance or by way of reimbursement and at such intervals and on such conditions, as the Secretary finds necessary. The amount of any grant under subsection (a) shall be determined by the Secretary, except as otherwise provided under section 163.*

(f) **LIST OF RECIPIENTS.**—*Not later than September 1 of each fiscal year, the Secretary shall publish in the Federal Register a list of the recipients of grants and contracts in each of the areas authorized in subsections (a) and (b), including a brief description of the project, and the amount of funds granted to each such project. The amounts for such grants and contracts shall total the amount appropriated under this part for such fiscal year.*

#### **SEC. 163 AUTHORIZATION OF APPROPRIATIONS.**

(a) **IN GENERAL.**—To carry out this part, there are authorized to be appropriated [\$3,650,000], \$4,000,000, for [fiscal year 1991], fiscal year 1994 and such sums as may be necessary for each of the [fiscal years 1992 and 1993]. fiscal years 1995 and 1996.

[(b) **LIMITATION.**—At least 8 percent, but not less than \$300,000, of the funds appropriated pursuant to the authority of subsection (a) shall be used to carry out the provisions of section 162(a)(2).]

(b) **LIMITATIONS.**—

(1) **PROJECTS OF NATIONAL SIGNIFICANCE.**—*At least 8 percent, but in no event less than \$300,000, of the amounts appropriated pursuant to subsection (a) shall be used to carry out the provisions of section 162(a)(1)(B).*

(2) **INVESTIGATIONS.**—

(A) **IN GENERAL.**—*The additional authority to fund projects under section 162(b) shall not be construed as requiring the Secretary to supplant funding for other priorities described in this part.*

(B) **TIME LINE FOR FUNDING.**—*If amounts are available to carry out subparagraphs (A), (B), and (C) of section 162(b)(1), the Administration shall provide funding to carry out such paragraphs not later than May 1 of the fiscal year in which such funds become available.*

(3) **PROGRAMMATIC REVIEW OR OTHER ADMINISTRATIVE ACTIVITIES.**—*The Secretary may not use the funds made available under subsection (a) for programmatic reviews prescribed by legislation review or other administrative activities under parts B, C, and D.*

(4) **TECHNICAL ASSISTANCE FOR PROTECTION AND ADVOCACY SYSTEMS.**—*If technical assistance to improve the effectiveness of protection and advocacy systems under part C is provided under section 142(c)(5)—*

(A) *no funding for the provision of such technical assistance to protection and advocacy systems shall be provided under this part; and*

(B) *the amount set aside for technical assistance under section 162(a)(1)(B) shall be proportionally reduced.*

















